

SUPPLANTING THE LAW AND LOCAL EDUCATION AUTHORITY THROUGH REGULATORY FIAT

HEARING

BEFORE THE

SUBCOMMITTEE ON EARLY CHILDHOOD,
ELEMENTARY, AND SECONDARY EDUCATION

COMMITTEE ON EDUCATION
AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

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SUPPLANTING THE LAW AND LOCAL EDUCATION AUTHORITY THROUGH REGULATORY FIAT

**Wednesday, September 21, 2016
U.S. House of Representatives
Committee on Education and the Workforce,
Subcommittee on Early Childhood, Elementary, and Secondary
Education
Washington, D.C.**

The Subcommittee met, pursuant to call, at 10:01 a.m., in Room 2175, Rayburn House Office Building, Hon. Todd Rokita [chairman of the subcommittee] presiding.

Present: Representatives Rokita, Thompson, Carter, Bishop, Grothman, Fudge, Davis, Bonamici, and Clark.

Also Present: Representatives Kline, Scott, Polis, and Adams.

Staff Present: Janelle Gardner, Coalitions and Members Services Coordinator; Tyler Hernandez, Deputy Communications Director; Amy Raaf Jones, Director of Education and Human Resources Policy; Nancy Locke, Chief Clerk; Dominique McKay, Deputy Press Secretary; Krisann Pearce, General Counsel; Mandy Schaumburg, Education Deputy Director and Senior Counsel; Alissa Strawcutter, Deputy Clerk; Leslie Tatum, Professional Staff Member; Brad Thomas, Senior Education Policy Advisor; Sheariah Yousefi, Legislative Assistant; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; Jamitress Bowden, Minority Press Assistant; Jacque Chevalier, Minority Deputy Education Policy Director; Denise Forte, Minority Staff Director; Mishawn Freeman, Minority Staff Assistant; Brian Kennedy, Minority General Counsel; Alexander Payne, Minority Education Policy Advisor; and Aneesh Sahni, Minority Education Policy Fellow.

Chairman ROKITA. Good morning, and welcome to today's hearing. When the committee last met to discuss the Every Student Succeeds Act, we heard concerns from State and local education leaders that the administration was not implementing the law in a way that respects its letter and intent.

Since that time, the Department of Education has released a regulatory proposal that I find so unprecedented and so unlawful, in fact, that it demands its own examination, which we are going to do today.

The proposal I am referring to is the department's proposed "supplement not supplant" regulation. This proposal changes the long-

standing policy that Federal funds supplement rather than supplant State and local resources.

For years, the rule was applied differently depending on how many low-income students the school served. As a result, schools faced different requirements. Some are more onerous than others.

That changed with the bipartisan Every Student Succeeds Act, legislation that again was passed with overwhelming support from both Republicans and Democrats.

Now, according to the law, the rule should be enforced equally across every school. To do that, the bipartisan law, again that the President signed, says districts only have to show that funds are distributed in a way that does not take into account Federal resources, and Congress deliberately chose not to prescribe a specific approach or outcome. I remember this. It was in the final negotiations.

The law also clearly prohibits the Secretary of Education from interfering in the process. However, that is exactly what the department and the Secretary is doing with their proposed rule, and the consequences will be significant. It would be one thing if it was a distinction without a difference, but I think as we are going to hear today, the consequences will be significant.

As Chairman Kline himself explained when the regulation was proposed, it threatens to impose a multibillion regulatory tax on schools across the country. To comply with the policy, many school districts will have no choice but to change their hiring practices and relocate their teachers. Other communities may have to raise taxes because they simply do not have the resources to meet this new burden. Some districts may have to do both.

So regardless of how a district must cope with the new regulation, the bottom line is that schools will be forced to make decisions based on getting numbers to work and not on what is in the best interest of their students, and the Federal Government will have unprecedented control over local education funding.

The department has said its proposal will provide “flexibility,” but it really just dictates a short list of options, and frankly bad options at that. At the end of the day, it will be America’s poorest neighborhoods that are impacted the most, and that is the last thing we intended as Congress when it passed the Every Student Succeeds Act.

In fact, Congress considered similar reforms during the debate of the legislation. We focused, for example, on a separate provision you may recall, comparability; instead, Congress specifically chose not to go down that road, not to touch that provision, and flat out rejected adopting a policy like the very one the department is proposing now.

The department insists that their supplement not supplant proposal is not related to comparability, but even the nonpartisan Congressional Research Service has explained how this proposal is essentially an indirect way to amend the comparability provision.

In short, this regulatory scheme is an attempt to accomplish something Congress specifically chose not to do. Anyone who was involved in passing the Every Student Succeeds Act knows that, whether they are willing to say so or not.

Still, even if the department were confused about the intent of the law, nothing excuses the fact that what it is proposing is simply unlawful. Again, if you look at the quotes on the screen, you can see that this language is taken directly from the law, the Every Student Succeeds Act specifically prohibits the Secretary from, quote “prescribing the specific methodology a local education agency uses to allocate State and local funds to each school receiving the assistance,” close quote.

The department claims that is not what they are doing, but with its limited list of options, it is clear that is exactly what is happening. That is why we have called on the department to throw this punitive policy out and to implement the law as it was written and as intended.

For too long, our schools were forced to contend with a failed top down approach to education, and that all changed with the Every Student Succeeds Act, but it seems the department has not learned this or chooses to ignore it, and is intent on undermining those important bipartisan reforms.

We will do everything within this committee’s power to ensure that does not happen. This hearing is part of our efforts to protect students, families, and taxpayers from this unprecedented and unlawful regulatory scheme, and just as importantly, to help every child receive an excellent education, which I know that is why we are all here.

The best chance we have to accomplish that critical goal is to ensure that the Every Student Succeeds Act is implemented according to the letter and intent of the law as we wrote it.

I look forward to hearing from our witnesses today and how this proposal is impacting their local communities across this country.

With that, I will yield to Ranking Member Fudge, Ms. Fudge, for her opening remarks.

[The statement of Chairman Rokita follows:]

Prepared Statement of Hon. Todd Rokita, Chairman, Subcommittee on Early Childhood, Elementary, and Secondary Education

When the committee last met to discuss the Every Student Succeeds Act, we heard concerns from state and local education leaders that the administration is not implementing the law in a way that respects its letter and intent. Since that time, the Department of Education has released a regulatory proposal so unprecedented—and so unlawful—that it demands its own examination.

The proposal I’m referring to is the department’s proposed “supplement, not supplant” regulation. This proposal changes the long-standing policy that federal funds supplement—rather than supplant—state and local resources. For years, the rule was applied differently depending on how many low-income students a school served. As a result, schools faced different requirements—some more onerous than others. That changed with the Every Student Succeeds Act—legislation that was passed with overwhelming support from both Republicans and Democrats.

Now, according to the law, the rule should be enforced equally across all schools. Districts only have to show that funds are distributed in a way that doesn’t take into account federal resources, and Congress deliberately chose not to prescribe a specific approach or outcome. The law also clearly prohibits the secretary of education from interfering in the process. However, that is exactly what this proposed rule would do, and the consequences will be significant.

As Chairman Kline explained when the regulation was proposed, it threatens to impose a multi-billion dollar regulatory tax on schools across the country. To comply with the policy, many school districts will have no choice but to change their hiring practices and relocate their teachers. Other communities may have to raise taxes because they simply don’t have the resources to meet this new burden. Some districts may have to do both.

Regardless of how a district must cope with the new regulation, the bottom line is that schools will be forced to make decisions based on getting the numbers to work—not on what’s best for their students—and the federal government will have unprecedented control over local education funding.

The department has said that its proposal will provide schools “flexibility,” but it really just dictates a short list of bad options. And, at the end of the day, it will be America’s poorest neighborhoods that are impacted most. That is the last thing Congress intended when it passed the Every Student Succeeds Act.

In fact, Congress considered similar reforms during debate of the legislation that focused on a separate provision, comparability. Instead, Congress specifically chose not to touch that provision and flat out rejected adopting a policy like the one the department is now trying to impose.

The department insists their “supplement, not supplant” proposal is not related to comparability, but even the nonpartisan Congressional Research Service has explained how this proposal is essentially an indirect way to amend the comparability provision. In short, this regulatory scheme is an attempt to accomplish something Congress specifically chose not to do. And anyone who was involved in passing the Every Student Succeeds Act knows that—whether they are willing to say so or not.

Still, even if the department were confused about the intent of the law, nothing excuses the fact that what it is proposing is simply unlawful. Again—[gesture to quote on screens] as you can see in this language taken directly from the law—the Every Student Succeeds Act specifically prohibits the secretary from “prescribing the specific methodology a local education agency uses to allocate state and local funds to each school receiving assistance.” The department claims that is not what they’re doing, but with its limited list of options, it’s clear that is exactly what is happening. That’s why we have called on the department to throw this punitive policy out and to implement the law as it was written and intended.

For too long, our schools were forced to contend with a failed, top-down approach to education. That all changed with the Every Student Succeeds Act, but it seems the department hasn’t learned its lesson and is intent on undermining those important, bipartisan reforms. We will do everything in our power to ensure that doesn’t happen.

This hearing is part of our efforts to protect students, families, and taxpayers from this unprecedented and unlawful regulatory scheme—and just as importantly, to help every child receive an excellent education. The best chance we have to accomplish that critical goal is to ensure the Every Student Succeeds Act is implemented according to the letter and intent of the law.

I look forward to hearing from our witnesses today and how they see this proposal impacting their local communities and schools across the country.

With that, I will yield to Ranking Member Fudge for her opening remarks.

Ms. FUDGE. Thank you, Mr. Chairman, and thank you all for being here to provide testimony today.

Certainly, this is a bipartisan law, and I believe if fully implemented, it will fulfill congressional intent and honor the Elementary and Secondary Education Act’s civil rights legacy to promote and protect the right to educational opportunity for our Nation’s most vulnerable children.

Money matters. Poverty, especially when highly concentrated, presents unique educational challenges. It takes more money, not less, to provide equitable educational opportunities in high poverty communities, which is why Congress enacted Title I to serve as a supplemental funding stream for our Nation’s neediest schools.

Simply put, Title I is Congress’ longstanding recognition that equal is not always equitable. Unfortunately, the intent of Title I has gone unrealized in school districts that continue to spend less to educate children in high poverty schools, perpetuating educational disparities within the district, despite drawing dollars from the same tax base.

For too long, school district decisions on budget allocation have gone unchecked, with schools serving high poverty neighborhoods getting less than their fair share.

The supplement not supplant, or SNS, requirement that Title I funds be in addition to State and local investment in schools receiving Federal dollars was first adopted by Congress in 1969, and is the most important fiscal accountability provision in the entire law.

In ESSA, Congress amended the provision. Compliance with SNS can no longer be determined using cost test demonstrations that allowed inequities to go unresolved. Congress did not agree, however, to remove or waive compliance with the SNS requirement.

To support enforcement of the requirement, the U.S. Department of Education has a replacement proposed funds-based standard for compliance. The replacement honors the intent of Congress to permit for greater flexibility in how Title I dollars are spent, while ensuring those dollars are in fact supplemental to State and local investment.

According to the proposal, each school district, not the Federal Government, determines its own formula for allocation of State and local funds. If a district's Title I schools are receiving their full share of State and local funds based on the district's formula, Title I dollars are truly supplemental, and the district is fully compliant with Federal law. That seems to be reasonable to me.

The proposed rule seeks to address the annual underfunding of high poverty schools. Meeting this new funds-based standard for SNS compliance will likely be uncomfortable in some school districts, those where inequities have gone unchecked. It will likely drive hard conversations and new found accountability and transparency for local budgeting processes.

While all of this may make compliance challenging, none of it disqualifies the proposal as inappropriate or illegal.

This is just how my colleagues on the other side of the aisle are characterizing the proposal, as part of a larger GOP narrative, attacking the legitimacy of the executive branch.

While their outrage and chest pumping is loud and distracting, I implore members of this subcommittee to not be distracted from the real issue.

Nothing about the proposal supplants the law or local authority as the title of this hearing would suggest, unless they are speaking of the local authority to undermine congressional intent by using Title I dollars to plug budget holes that shortchange high poverty schools.

I respectfully remind my friends in the majority that SNS is a Federal requirement to be enforced by the Federal agency. Nothing in ESSA allows a local educational authority to supersede that enforcement.

Let me be clear. Enforcement of the supplement not supplant requirement is the responsibility of the department. It is my expectation and the expectation of Congress that the Secretary fulfill his responsibility to set an enforceable compliance standard for the nearly 15,000 school districts across the country.

In ESSA, Congress made it very clear that supplement not supplant would remain a requirement. We chose to amend it, not to eliminate it. At this point, I find the rhetoric of those opposed disingenuous and devoid of any suggestion of what would constitute an acceptable standard of compliance. Decrying the standard put forth by the department without suggestion for what the standard

should be is the same as asking for no standard and no enforcement.

That, my friends, was not the bipartisan agreement of ESSA. With the enactment of ESSA, we have the opportunity to create a more equitable system of public education. It would be inexcusable for the Secretary to render the supplement not supplant requirement meaningless without a Federal standard for compliance.

I thank the witnesses for taking time out of their busy schedules to participate in today's hearing, and look forward to learning about their experiences and recommendations for ensuring a smooth and successful transition to the new law in a way that preserves the critical Federal role to promote educational equity.

Thank you, Mr. Chairman. I yield back.

[The statement of Ranking Member Fudge follows:]

**Prepared Statement of Hon. Marcia L. Fudge, Ranking Member,
Subcommittee on Early Childhood, Elementary, and Secondary Education**

Thank you, Mr. Chairman. And thanks to our witnesses for appearing before the subcommittee today to discuss the implementation of the Every Student Succeeds Act, a bipartisan law that I believe, if implemented with fidelity, will fulfill both Congressional intent and honor the Elementary and Secondary Education Act's civil rights legacy to promote and protect the right to educational opportunity for our nation's most vulnerable children.

Poverty, especially when highly concentrated, presents unique educational challenges. It takes more money, not less, to provide equitable educational opportunity in high-poverty communities, which is why Congress enacted Title I – to serve as a supplemental funding stream for our nation's neediest schools. Simply put, Title I is Congress' longstanding recognition that equal doesn't mean equitable.

Unfortunately, the intent of Title I has gone unfulfilled in school districts that continue to spend less to educate children in their high-poverty schools than in their lower-poverty schools, perpetuating within-district educational disparities, despite drawing upon dollars from the same tax base.

First adopted by Congress in 1969, the "Supplement not supplant" or "SNS" requirement that Title I funds be supplemental to state and local investment in schools receiving federal dollars is the most important fiscal accountability provision in the entire law. Congress agreed, in ESSA, to amend the provision to no longer allow compliance with SNS to be determined using current-practice cost test demonstrations that have allowed within-district inequities to go unresolved.

Congress did not agree, however, to remove or waive compliance with the SNS requirement. And so, to ensure the integrity of the requirement, the U.S. Department of Education has put forward a proposal to replace the now disallowed cost test demonstrations with a new standard for compliance. One that honors the intent of Congress to allow for greater flexibility in how Title I dollars are spent while also ensuring those dollars are, in fact, supplemental to state and local investment.

According to the proposal, each school district, not the federal government, comes up with its own formula for allocation of state and local funds. If the district's Title I schools are receiving their full share of state and local funds based on the district's own formula, Title I dollars are truly supplemental and the district is fully compliant with federal law. That seems like a reasonable standard to me.

The proposed rule seeks to address, not ignore, the annual underfunding of high-poverty schools in setting forth the standard for compliance. Meeting this new standard for SNS compliance will

be uncomfortable in some school districts. It will likely drive politically hard conversations and newfound accountability for local budgeting processes. And while all of that may be challenging, none of it inherently disqualifies the proposal as inappropriate or illegal.

As part of a larger narrative and attack on the role of the executive branch, colleagues on the others side of the aisle are characterizing the proposal as inappropriate and illegal. Nothing about the proposal "supplants" the law or local authority as the title of this hearing would suggest – unless they're speaking of the local authority to undermine the spirit and intent of Title I by using it to plug budget holes.

Let me be clear: enforcement of the supplement not supplant requirement is the responsibility of Department, and it is my expectation – and the expectation of House Democrats – that the Secretary fulfill his responsibility to set an enforceable

standard for the nearly 15,000 school districts across this country. In ESSA, Congress made it very clear that supplement not supplant would remain a requirement. We chose to amend it, not eliminate it.

With the enactment of ESSA we have the opportunity to create a more equitable system of public education. It would be inexcusable for the Secretary to render the supplement not supplant requirement meaningless without a federal standard for compliance and squander that opportunity.

I thank the witnesses for taking the time out of their busy schedules to participate in today's hearing, and look forward to learning about their experiences and recommendations for ensuring a smooth and successful transition to the new law in a way that preserves the critical federal role in promoting educational equity.

Thank you, and I yield back.

Chairman ROKITA. I thank the gentlelady. A quorum being present and pursuant to Committee Rule 7(c), all members will be permitted to submit written statements to be included in the permanent hearing record, and without objection, the hearing record will remain open for 14 days to allow such statements and other extraneous material referenced during the hearing to be submitted for the official hearing record.

I will now turn to the introduction of our distinguished witnesses. First to testify will be Dr. Steve Canavero. He serves as the superintendent of public instruction for the Nevada Department of Education in Carson City, Nevada.

Prior to this position, Dr. Canavero served as the deputy superintendent of student achievement at the Nevada Department of Education, and as the first director of the State Public Charter School Authority.

Dr. Canavero has a background in evaluation and planning, and has worked as a teacher and principal. Welcome.

Next, Mr. Ryan Owens serves as executive director for the Cooperative Council for Oklahoma School Administration in Oklahoma City, Oklahoma. Prior to this position, Mr. Owens served with the United Suburban Schools Association and the Oklahoma Education Coalition, the Oklahoma Education Technology Trust, and is an adjunct professor in the Colleges of Education at Southern Nazarene University and the University of Oklahoma at Tulsa. Welcome, sir.

Next, Mr. Scott Sargrad serves as the managing director for the K-12 Education Policy team at the Center for American Progress in Washington, D.C., and in this position, Mr. Sargrad focuses on the areas of standards, assessments, school and district accountability systems, and school improvement.

Prior to this position, Mr. Sargrad served as the deputy assistant secretary for policy and strategic initiatives with the Office of Elementary and Secondary Education at the U.S. Department of Education. Welcome, sir.

Finally, Dr. Nora Gordon serves as associate professor of public policy with the McCourt School of Public Policy at Georgetown University, and as a research associate with the National Bureau of Education Research.

Dr. Gordon's research focuses on fiscal federalism in American education policy, and the current and historical Federal role in elementary and secondary education. She is a member of the expert panel to the Department of Education on its study on the Title I formula as mandated by the Every Student Succeeds Act. Welcome to you as well.

I will now ask our witnesses to raise your right hand. There is no need for you to stand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Let the record reflect that the witnesses all answered in the affirmative.

Before I recognize you to give your testimony, let me briefly explain our lighting system, and sometimes it is a reminder for us up here, not just you all over there. You each have five minutes to present your testimony. When you begin, the light in front of you will turn green, of course. When one minute is left, it will be yellow, and will turn red when your time is over. Please respect those signals. When the red light occurs, I will ask you to wrap up your remarks almost immediately. Members, those of us here, will have five minutes each to ask questions.

So with that, Dr. Canavero, I recognize you for five minutes.

TESTIMONY OF STEVE CANAVERO, SUPERINTENDENT OF PUBLIC INSTRUCTION, NEVADA DEPARTMENT OF EDUCATION

Mr. CANAVERO. Thank you, Chairman Rokita, Chairman Kline, Ranking Member Fudge, and Ranking Member Scott, members of the subcommittee for the opportunity to testify today, and for your work to approve the Every Student Succeeds Act.

This new law will allow Nevada to build on our existing education improvement efforts while at the same time setting high standards for student success.

On behalf of the many chiefs like myself who are using this opportunity present under the Every Student Succeeds Act to transition our conversations away from Federal mandate to State priorities and finding opportunities within the Federal law and Federal funding to support our priorities, again, thank you.

One of the most important aspects of the Every Student Succeeds Act is its focus on equity, as was mentioned here, its civil rights legacy. We must ensure all students have the opportunity to succeed and having access to the economic opportunities that a quality education provides, and that States, districts, and schools should be held accountable for clear and measurable results.

In Nevada, Governor Brian Sandoval and the legislature have taken a number of steps to promote equity and improve student achievement. In 2005 alone, including additional financial and program supports for English learners and for students living in a poorest zip codes in Nevada; support for effective literacy instruction to raise student achievement in reading; several new programs for consistently underperforming schools, including an Achievement School District, which allows the State to intervene in failing schools; a Social Worker in Schools Program; student access to technology and professional development for teachers to utilize that technology in the classroom; and addressing educator quality by providing PD and improving the educator pipeline throughout the State.

Each of these programs represents a substantial financial investment by the State to promote equity and achievement for our 460,000 students and schools. All told, Nevada's legislature in-

vested roughly 340 million into additional funding into education in 2016 and 2017 alone. That is approximately a 10 percent increase in the State's education budget all going to students who need it most. And we intend to grow this investment on a biannual basis.

It was these investments and my Governor and State strong commitment to equity that lead me to testify here today about the Department of Education's proposed supplement not supplant regulations. I know my fellow chief State school officers share similar concerns.

The department's goals are laudable. It is clear underperforming schools need more funding to support their students' needs. However, imposing sweeping new Federal mandates on how school districts must spend their State and local funds in addition to the complicated way the proposed regulations approach equity and school funding could actually hurt State and local efforts to provide equity for all students.

Here is a few reasons why. First, the regulations look only at the amount spent in Title I schools versus non-Title I schools. While the total dollars spent is important, it is not the only measure of how we support students. These regulations do not take into account other equity measures, such as improved access to educational opportunities like advanced placement, magnet schools, career and technical education programs, the arts, or effective educators. By ignoring these measures, the proposed regulations could harm State and local efforts to promote these measures to benefit students.

In Nevada, our schools are providing these types of opportunities for all kids, and we seek to expand them. I fear the proposed regulations could result in significant restructuring of these opportunities to allow students to support a perverse incentive to lower the number of offerings to make sure we are in compliance with the proposed fiscal rules.

Second, districts will have to manage spending centrally to comply with the proposed regulations. This means that any decision that affects spending, which we know is virtually all decisions, will have to be vetted through the district finance office for compliance checks. This will affect everything from school hiring and purchasing to curriculum.

In my State, we are working to return these decisions to the local level, to those who understand students' individual needs best. In fact, our State just approved a plan, a bipartisan committee and the State board approved a plan for the reorganization of Clark County School District, our largest school district in Las Vegas, which shifts the major decisionmaking around capital, human, financial, operations, and academic planning from the central service of the district to each school site.

Third and finally, I am concerned about what the regulations do not say. For example, the rule does not define many important terms like what it means to distribute "almost all" of a district's money to schools, or what it means to have a "high proportion" of disadvantaged students in a non-Title I school to qualify for one of the exceptions.

Importantly, the rule does not address what State education agencies should do if there is noncompliance. While these seem like technical issues, they will have a significant impact on my State's investments in an effort to promote equitable opportunities for all kids.

I care deeply about equity. I am working closely with my Governor and my State legislature to promote greater equity and achievement for all kids in my State. We have made great strides to create a more equitable education system, and I urge the department to reconsider its proposed rule to interpret supplement not supplant in a way that is both consistent with the spirit of the Every Student Succeeds Act and promotes equity.

Thank you, sir, for the time.

[The statement of Mr. Canavero follows:]

“Supplanting the Law and Local Education Authority Through Regulatory Fiat”
U.S. House of Representatives Committee on Education and the Workforce
Subcommittee on Early Childhood, Elementary, and Secondary Education
September 21, 2016

Testimony of Dr. Steve Canavero, Superintendent of Public Instruction, State of Nevada

Thank you Chairman Rokita, Ranking Member Fudge, and members of the Subcommittee for the opportunity to testify today, and thank you for your work to approve the Every Student Succeeds Act (ESSA). This new law will allow Nevada to build on our existing education improvement efforts, while at the same time setting high standards for student success.

One of the most important aspects of ESSA is its focus on equity. We must ensure all students have the opportunity to succeed, and that states and districts are held accountable for clear and measurable results. Governor Brian Sandoval and the Nevada Legislature have taken a number of steps in Nevada to promote equity and improve student achievement, including:

- Additional financial and program supports for English learners, known as the Zoom Schools Program,
- Additional financial and program supports to students living in the poorest zip codes in Nevada, known as the Victory Schools Program,
- Support for effective literacy instruction to raise student achievement in reading, known as the Read by Grade Three Program,
- Several new programs for consistently underperforming schools including an Achievement School District which allows the state to intervene in failing schools, reflecting an intolerance for persistent failure,
- Social Worker in Schools Program, which places social workers in schools with the greatest need,
- Providing professional development and student access to one-on-one technology, through our Nevada Ready 21 Technology Program, and
- Addressing educator quality by providing professional development and making improvements to the educator pipeline through the Great Teaching and Leading Program, the Governor’s Nevada Teach Scholarships, and new teacher incentives.

Each of these programs represents a substantial financial investment by the state to promote equity for our 460,000 students and schools. For example, our Victory Schools Program supports 35 schools and over 21,000 students and their communities in providing \$25 million per year to support schools in our state’s poorest areas. Our efforts to see dramatic improvement in struggling schools includes over \$15 million targeted to support principal effectiveness and recruiting new high quality school leaders to the state. The Zoom Schools Program supports over 60 schools and nearly 45,000 students in providing an additional \$50 million per year to support English language acquisition and academic proficiency for English learners. All told, Nevada’s legislature put over \$343 million of additional funding into education – in 2016 and 2017 -- and intends to grow that investment on a bi-annual basis with an invest – evaluate – reinvest – evaluate model.

It is these investments and my Governor and state's commitment to equity that lead me to testify here today about my concerns with the Department of Education's proposed supplement not supplant regulations.

The Department's goals are laudable. It is clear underperforming schools need more funding to support their students' needs. But imposing sweeping new federal mandates on how school districts must spend their state and local funds, in addition to the complicated way the proposed regulations approach equity and school funding, could actually *hurt* state and local efforts to provide equity for all students.

First, the regulations look only at the amount spent in Title I schools versus non-Title I schools. The total dollars spent in each school is certainly part of equity, but it is not the only measure. The proposed regulations do not take into account other equity measures, such as improved access to educational opportunities like Advanced Placement, career and technical education programs, the arts, and effective teachers, and they could in fact harm state and local efforts to promote these measures to benefit students.

Defining equity so narrowly also conflicts with a key principle of ESSA, which is to empower states and districts to set the best path for student achievement based on their needs. As you can see from the progress we are making in Nevada on equitable funding, we, like other states, are ready to take on that challenge. And we are also prepared to be held responsible for our students' results. But approaches to accountability and funding can and should vary depending on state, district, and student needs.

As a practical matter, I am concerned the proposed regulations could frustrate a number of equity and school quality efforts in our state. For example:

- Curtailing state and locally-driven equity efforts. There exist a number of approaches across Nevada to promote equity for students. It is unclear from the proposed regulations the impact on non-Title I magnet or other choice programs like Career and Technical Academies. Recent efforts in our largest school district to expand access for high school students to attend specialized programs within non-magnet schools that include: Career Tech Education, Advanced Placement, National Academy Foundation, and Project Lead the Way. The proposed regulations could result in significant restructuring of these opportunities to all students and support a perverse incentive to lower the number of offerings to comply with fiscal rules.
- Hindering the move to more equitable funding formulas that appear to not fit the regulatory parameters. In 2013, Nevada began a transition to provide additional funding in the form of a "weight" to students that are: English language learners, in poverty, special education, and gifted and talented. Present law requires this transition to be complete in FY2022. The proposed regulations provide for some exclusions; however, the ambiguous language and deference to the U.S. Department of Education to make determinations may adversely impact my state's plan to provide additional resources. For example, funding for English language learners is entering into the fourth year of implementation. Eligibility of funding is not contingent upon Title status,

rather funding follows the student. It is unclear to me whether or not the proposed regulations would impede the state's ability to carry out this concentrated funding plan.

- Exacerbating of teacher shortages and curtailing Nevada efforts to fill every classroom with an effective educator. We are experiencing a serious teacher shortage in Nevada and applied policy and funding to incentivize teachers to teach in Nevada, to schools with the highest vacancies, and classrooms serving our most vulnerable students. It is unclear if some of our solutions to address the teacher pipeline will comply with the rule, such as application of scholarship dollars to alternative routes to licensure and a clear emphasis on expanding teacher recruitment to diverse candidates.

Second, districts will have to manage spending centrally to comply with the proposed regulations, meaning any decision that affects spending -- which is virtually all decisions -- will have to be vetted through a district finance office for a compliance check. This could affect everything from school hiring and purchasing to curricular decisions. As a former school principal, I am deeply concerned that school-level decisions -- made by the people closest to the students -- could be overridden by central level staff to comply with these proposed regulations.

Districts might have to manage compliance by moving teachers or other resources close to, or even after, the start of the school year to maintain the spending balances. Research shows stability is important, particularly in low-income schools, and that last minute changes are bad for students. In Las Vegas alone the transiency rate is 40 percent, meaning almost half of the over 320,000 students begin the year at one school and end it at another. Unfortunately, transiency is strongly correlated with poverty. Under the proposed regulations, it is unclear how I would advise school districts in Nevada to remain compliant without making last-minute decisions to force teachers to transfer to another school, or move technology from one building to another. We know this is bad practice in education, and I am concerned we would have to make these bad decisions to comply with these proposed regulations.

Central-office management means efforts to give schools more autonomy might be curtailed. Indeed, a bi-partisan interim committee just passed a Plan for the Reorganization of Clark County School District (Plan). At its core the Plan shifts control from the central service of the district to each local school including decisions related to capital (human and fiscal), operations, and academic programming. Each school would have a team comprised of the principal, parents, and teachers that would establish goals and objectives for the school in an effort to better meet the needs of the kids in that school. For a number of reasons, it is unclear whether this Plan would comply with the proposed supplement not supplant rule, so this locally-driven effort could be stymied by the proposed rule.

My last concern is about what the regulations do not say. For example, the rule does not define many important terms like what it means to distribute "almost all" of a district's money to schools, or what it means to have a "high proportion" of disadvantaged students in a non-Title I school to qualify for an exemption. The regulations also do not address key services districts support centrally that are not usually (or easily) allocated to schools like building maintenance and repair needs, transportation, special education services, staff that work in more than one school, or multi-year procurements among

others. And importantly, the rule does not address what a state educational agency (SEA) should do if there is non-compliance or how to address conflicts between an SEA's federal enforcement obligations and state or local laws that might limit a district's ability to comply with the proposed regulations. While these seem like technical issues, they have three important equity implications:

First, how a district treats central costs in its calculations will have a dramatic effect on what school-level spending looks like in a given district. If the rule does not clearly and specifically define how various costs should be treated, then the rule will be implemented in wildly different ways across the country. This was one of the problems with the old supplement, not supplant rule. Without clear rules, calculations of school spending can be distorted, undermining both equity and transparency.

Second, if the rule lacks clear standards, auditors will rely on their own judgment, which raises audit risks. This could lead to inconsistent enforcement because of differing perspectives on what compliance requires.

Third, SEAs are responsible for overseeing local compliance with supplement not supplant, and the proposed rule would impose a substantial new burden on state capacity. The complexity and ambiguities of the proposed rule means my SEA will have to put more resources into administrative oversight of this rule, which will take away the resources and capacity we need to help schools improve achievement for kids.

I care deeply about equity, and am working closely with my Governor and state legislature to promote greater equity for all kids in Nevada. We have made great strides in my state, investing more than \$343 million in the last two years alone to create a more equitable education system. The Department's proposed supplement not supplant regulations will not help Nevada achieve its goal of equity for all kids. I urge the Department to reconsider its proposed rule and to interpret supplement not supplant in a way that is both consistent with the spirit of the Every Student Succeeds Act and promotes equity.

Chairman ROKITA. Thank you, Doctor. Mr. Owens, you are recognized for five minutes.

TESTIMONY OF RYAN OWENS, EXECUTIVE DIRECTOR, COOPERATIVE COUNCIL FOR OKLAHOMA SCHOOL ADMINISTRATION

Mr. OWENS. Good morning, Chairman Rokita, Chairman Kline, Ranking Member Fudge, and Ranking Member Scott, and honorable members of this committee.

My name is Ryan Owens, and I am the executive director of the Cooperative Council for Oklahoma School Administration. Thank you for the opportunity to be here today. CCOSA represents all of Oklahoma's public, private, and charter school administrators. With more than 2,700 members actively serving almost 700,000 students, we work each day to give voice to the issues impacting educational attainment in the Sooner State.

In the interest of brevity, I am not going to detail the specifics of the proposed regulations. I am going to focus my comments on the realities that school districts and superintendents will face in implementing the proposed rule, and what it could mean for the students they serve.

Over 66 percent of school sites in Oklahoma qualify as Title I. Superintendents in Oklahoma and across the Nation are acutely aware of the consequences of inequitable resource allocation. Prescriptive regulations like these are not the solution. These regulations create new administrative burdens and encourage compliance-driven decisionmaking, which robs communities of their ability to govern their local schools.

It would be far more helpful for the department to issue technical assistance that instructs States and districts about how to achieve the goal of equitable distribution of resources.

In seeking to equalize State and local spending among schools, the proposed regulations, while noble in their goal, reach far beyond the intent of ESSA, which merely requires LEAs to demonstrate that Title I schools receive at least as much State and local funds as they would otherwise receive if they were not a Title I school.

Currently, in Oklahoma, site level administrators are given the flexibility to assess student needs and determine the amount of resources necessary to facilitate instruction. Under the proposed regulation, district administration will have to override school level decisions to ensure balanced resource allocation between Title I and non-Title I schools without regard to how those resources are used to benefit children.

The proposed rule is focused on teacher salaries as part of the calculation for equitable resource allocation among Title I and non-Title I schools. Destroying stability within classrooms and among schools is a major concern as last-minute movement of staff and other resources is likely in districts with multiple sites.

Due to our State's budget crisis, Oklahoma schools have eliminated over 1,500 teaching positions and we still have over 500 vacancies systemwide. How will Oklahoma districts using long-term substitutes and larger class sizes satisfy a requirement for equal-

ized spending when the resource to be measured, teachers, does not exist?

If the proposed rule becomes law, cost variability with enrichment programs will no longer be tolerable due to the need for uniform spending among Title I and non-Title I schools. For example, John Marshall Mid-High School in Oklahoma City Public Schools, a Title I school, offers students the opportunity to participate in a Finance Academy where they learn about the finance industry and work with university accounting students to file income tax statements at no cost for eligible Oklahomans. This is the type of specialized program at risk under the proposed rule.

Another concern is enforcement of the proposed rule, and what will happen to districts if they fall out of compliance.

The proposed regulation is silent about the meaning of key terms, as was mentioned. We are all left confused about what it means to allocate “almost all” of State and local funds to school sites. The lack of clarity and the meaning of key terms in the proposed rule increases the risk of uneven enforcement.

Recently, in Oklahoma, in one school, there was a profoundly disabled student that was required to be served out of State. The annual cost for these services exceeded \$250,000. Would these costs be included in a compliance calculation for equitable fund distribution and, if so, how would a district equalize the effect of such allocation?

Will local bond levies or maintenance of the physical plant be included in these cost calculations and, if so, will the proposed rule seek to override the decision of local voters by equalizing construction and improvement among Title I and non-Title I schools?

The proposed rule could undermine local support for future bond issues as it could get harder to pass bond issues in compliance with the rule.

ESSA recognized that those closest to students and schools had the best hope for improving learning conditions. The regulations proposed by the department take away the very flexibility ESSA guarantees.

I respectfully ask that the department revisit the proposed regulations and require of schools only what ESSA demands, which is to demonstrate that Title I schools receive as much State and local funds as they would otherwise receive if they did not participate in Title I.

Thank you, Mr. Chairman.

[The statement of Mr. Owens follows:]



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Statement by Mr. Ryan Owens
Hearing, "Supplanting the Law and Local Education Authority Through Regulatory Fiat"
U.S. House, Subcommittee on Early Childhood, Elementary, and Secondary Education
September 21, 2016

Good morning Chairman Rokita, Ranking Member Fudge, and Honorable Members of this Committee. Thank you for the opportunity to participate in today's hearing. My name is Ryan Owens and I am the Executive Director of the Cooperative Council for Oklahoma School Administration – CCOSA. CCOSA is an incorporated not-for-profit professional association representing all of Oklahoma's public, private, and charter school administrators. With more than 2,700 members actively serving almost 700,000 students, CCOSA works each day to give voice the issues impacting educational attainment in the Sooner State.

The focus of today's hearing is the United States Department of Education's proposed rules on Supplement not Supplant under Title I of the Elementary and Secondary Education Act.

Since the 1970's a policy objective consistent with the focus of the ESEA has been to provide funds for low-income schools.

School districts in Oklahoma, over 66% of which are Title I schools, have grown accustomed to the various fiscal requirements under Title I Part A that include the current SNS compliance test - which essentially asks whether Title I funds were used to pay for something the district would have provided in the absence of those federal funds.

ESSA takes us away from this individual cost analysis and focuses the inquiry on how schools distribute their state and local funds to all school sites in order to determine if Title I funds are supplementing state and local funds in Title I schools.

The proposed ESSA Regulations requires districts to do two things:

1. Publish their methodology for allocating state and local funds in a format and language parents and the public can understand, and
2. Demonstrate that the chosen methodology gives each Title I school all the state and local funds it would otherwise receive if it didn't participate in Title I.

To satisfy the Department of Education's stated policy goal of reducing or eliminating funding gaps between Title I schools and non-Title I schools, the proposed rule gives schools four options to demonstrate that Title I schools would receive all the state and local funds they would otherwise receive. The bottom line for the proposed regulations is that LEAs would be required to equalize state and local spending among Title I and non-Title I schools in the district.



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In the interest of brevity, I am not detailing the specifics of the USED proposal; I am focusing my comments on the realities that school districts and superintendents will face in implementing the rule, as proposed, and what it could mean for the students they serve.

Superintendents in Oklahoma, and across the nation, are acutely aware of the consequences of inequitable resource allocation. Prescriptive regulations like these are not the solution. Rather than revealing a new reality or truth, these regulations create new administrative burdens, encourage compliance driven decision-making, and rob communities of their ability to govern their local schools. In regard to the Department's goal of equitable resource allocation, it would be far more helpful for the Department to issue technical assistance that instructs states and districts about how to achieve this goal.

There are many unknowns about the proposed regulations.

LEGAL AUTHORITY TO ENACT PROPOSED RULES

Superintendents in Oklahoma are concerned that the proposed regulations reach far beyond the intent of the Every Student Succeeds Act. The ESSA does not require that LEAs equalize spending among Title I and non-Title I schools. Amendments along that line were considered throughout the eight-year reauthorization process and were ultimately left out of the law. ESSA merely requires LEAs to demonstrate that Title I schools receive at least as much state and local funds as they would otherwise receive if they weren't a Title I school. The proposed regulation, while noble in its intent, far exceeds the legal guardrails Congress has established for Title I funding. In this regard, CCOSA's position aligns with that of AASA, the School Superintendent's Association.

CENTRALIZATION OF DECISION-MAKING AND SPENDING

The proposed regulations will result in districts consolidating budgetary decision-making within the central office. Currently in Oklahoma site level administrators are given the flexibility to assess student needs and determine the amount of resources necessary to facilitate instruction. Under the proposed regulation, in an effort to equalize spending among Title I schools and non-Title I schools, district administration will have to override school-level decisions to ensure that there is a balance between Title I and non-Title I schools.

This is the antithesis of doing what is best for kids. Rather than looking at the needs of particular schools and budgeting accordingly, central office administrators will be devoting time to an arbitrary exercise of resource allocation, balancing, re-allocation of resources, re-balancing, etc. without regard to how the resources are to be used to benefit children.





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What might this look like in Oklahoma?

Destroying stability within classrooms and among schools is a major concern. Last minute movement of staff and other resources is likely in districts with multiple sites, such as Oklahoma City and Tulsa.

The proposed rule is focused on teacher salaries as part of the calculation for equitable resource allocation among Title I and non-title I schools. How will districts in Oklahoma satisfy this requirement given that our state is in the midst of an unprecedented teacher shortage? Due to our state's budget crisis Oklahoma schools have eliminated over 1,500 teaching positions and still have over 500 vacancies. According to our state's school boards association, the majority of Oklahoma districts are indicating that Special Education, High School Science, and Elementary teaching positions are the most difficult to fill. How will districts using long-term substitute teachers, emergency certified teachers, or larger class sizes satisfy a requirement for equalized spending when the needed resource, teachers, do not exist?

The proposed rule would likely lead to the elimination of programs and initiatives that increase student and/or parent choice. Many of our best enrichment programs come with one common theme - variability of costs. If the proposed rule becomes law, cost variability will no longer be tolerable due to the need for uniform spending among Title I and non-Title I schools.

The proposed regulation becomes unworkable in a state like Oklahoma where we offer students and parents choices such as online coursework, concurrent enrollment, language immersion programs, advanced placement electives, and Career and Technology programs.

This proposed rule incentivizes a "one-size fits all" approach to district programming because uniformity will make compliance easier. This is detrimental to students as it leads to the elimination of specialized schools and specialized programs. These specialized programs exist for Title I and non-Title I schools in Oklahoma. For example, John Marshall Mid-High School in Oklahoma City Public Schools, a Title I school, offers students the opportunity to participate in a Finance Academy. Students learn about the finance industry and have an opportunity to work with accounting students to file income tax statements at no cost for eligible Oklahomans. In addition these students work at a credit union located inside the school. This is the type of specialized program that is at risk under the proposed rule.

ENFORCEMENT IS LEFT TOTALLY SILENT

What happens under the proposed rules if a district does not meet one of these options? The rule is silent on this issue. What is the penalty for non-compliance?





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KEY TERMS ARE LEFT UNDEFINED

The proposed regulation is silent about the meaning of key terms. For example, what does it mean for a district to allocate "almost all" of its state and local funds to schools? What is included in these calculations?

Recently in one Oklahoma school, there was a profoundly disabled student that was required to be served out of state. The annual cost for these services exceeded \$250,000 per year. Would these costs be included in a compliance calculation for equitable fund distribution? If so, how would the district attempt to "equalize" the effects of this allocation among other schools?

Will local bond levies and/or maintenance of the physical plant be included in these cost calculations? Will other sources of revenue be included such as School Activity Funds, Gifts, Donations, etc.?

Many districts in Oklahoma have bond issues that will continue to be active when the proposed rule goes into effect. Local voters have participated in the creation of these initiatives and approved them at the ballot box by more than 60%. Will the proposed rule seek to override the decision of local voters by equalizing construction and/or improvement spending among Title I and non-Title I schools? If so, the proposed rule undermines local support for future bond issues as it will get harder to pass bonds that are in compliance with the rule.

Will auditors simply come out and look at a district's calculation and compare that to what the auditor thinks the regulation means? The lack of clarity in the meaning of key terms in the proposed rule increases the risk of uneven enforcement of the rule. States, schools, and the Department of Education must work from the same set of assumptions.

CONCLUSION

Educators work every day to open a world of possibilities and opportunity for their students. ESSA recognized that those closest to students and schools have the best hope of improving learning conditions. The regulations proposed by the Department of Education take away the very flexibility ESSA guarantees.

I respectfully ask that the Department revisit these proposed regulations and require of schools only what ESSA requires of LEAs, to demonstrate that Title I schools receive as much state and local funds as they would otherwise receive if they didn't participate in Title I.

Chairman ROKITA. Thank you, Mr. Owens. Mr. Sargrad, you are recognized for five minutes.

**TESTIMONY OF SCOTT SARGRAD, MANAGING DIRECTOR, K-12
EDUCATION POLICY, CENTER FOR AMERICAN PROGRESS**

Mr. SARGRAD. Thank you, Chairman Rokita, Chairman Kline, Ranking Member Fudge, and Ranking Member Scott for the opportunity to speak here today on the supplement not supplant provision in the Every Student Succeeds Act.

And I just want to note that I bring here today my perspective as a former teacher and special ed aide as well. That is how I started my career in education, and that is something I bring with me wherever I go.

As you all know, in 1965, Congress designed Title I of the Elementary and Secondary Education Act to provide additional resources to disadvantaged students in poor schools. Within years, it was clear that poor students did not receive their fair share of resources.

To address this inequity, Congress soon after approved the first supplement not supplant provision to ensure that districts did not use Federal money to replace State and local dollars.

On September 6 of this year, the Department of Education issued draft regulations on ESSA's updated supplement not supplant provision taking another important step towards fulfilling the law's requirements.

But before I dive into the research and policy, I just want to step back and note that we are not considering here just dry academic questions. Even as we sit here today, in too many schools across the country, too many low-income students are in crumbling schools without access to effective and experienced teachers. They do not have rigorous courses. They do not have the wrap around services that they need to be successful.

In fact, just two weeks ago in Baltimore, on a hot September day, every school closed early because those schools did not have air conditioning and those students lost valuable learning time.

As Ranking Member Fudge said earlier, money matters in education. It matters particularly for students from low-income families. This is common sense, and it is supported by a growing body of research.

For low-income students, a 10 percent increase in spending increased adult wages by nearly 10 percent. Another study found that greater State spending on low-income students dramatically improved student learning in both reading and in math. Students in poorer schools, however, continue to receive less than their richer peers.

The Department of Education found in approximately 1,500 school districts across the country, about 5,700 schools receive on average \$440,000 less per year than wealthier schools in the same district. That is a lot of money, \$440,000 could let a school hire 8 new guidance counselors, it could give a \$10,000 bonus to 40 teachers.

This inequity also happens across districts, and while there is significant variation between States, high poverty districts on average spend 15 percent less per pupil than low poverty districts.

In Pennsylvania, where I grew up, poorer school districts spent 33 percent less per pupil than wealthier districts in the State.

As a result of these policies, children of color often suffer the most. Compared to high poverty and high minority schools, wealthier and low minority schools offer more rigorous core programs. Wealthier schools are twice as likely to offer a full range of math and science courses, they offer three times as many AP courses, and they are twice as likely to offer dual enrollment opportunities.

But again, these are not just facts and figures. Every day real kids walk into real schools with so few resources that every single one of us would find them unacceptable for our own child.

In one Detroit elementary and middle school, black mold covers the gym floor and ceilings are full of exposed wires. In the William Penn School District, just down the road from where I grew up, students like Jameria Miller “race to class to get the best blankets” because they needed to stay warm since the school’s metal walls have no insulation.

From the passage of the original ESEA in 1965, the Federal Government’s role has been to protect historically disadvantaged students and ensure they have the same opportunities as their more advantaged peers. Beginning with the original supplement not supplant provision, the Federal Government has had a responsibility to enforce this requirement of the law, and today’s ESSA is no different.

Districts have historically shown compliance with the supplement not supplant requirement by ensuring that every service purchased with Title I funds was “supplemental” and would not have been provided otherwise, and this meant that districts often limited their spending to programs they could easily show were supplemental and not necessarily programs that were the most impactful, and Congress rightly with the new law stopped that shortsighted practice. They did not make districts justify every purchase.

Now instead, districts must demonstrate that their methods of funding make sure that poorer schools get their fair share.

Recognizing that these historical funding inequities are a problem without an easy solution, the new regulation provides multiple options for districts to demonstrate compliance, and States can develop their own compliance tests.

There is additional flexibility for schools serving lots of students with disabilities, lots of English learners, districts with small schools or schools with a single grade span. And there is plenty of time to comply.

While this change will require extra efforts from school districts, it does not mean that they will have to use completely new strategies to distribute their school funding. Ninety percent of districts will already be in compliance. That does not mean we can rest on our laurels. Those 10 percent of districts have to do the hard work to show they are fairly supporting low-income schools, and they have to do that with State and local funds before the Federal dollars, but this hard work is worth it.

We know these funding inequities remain. We know that money matters, and the department’s regulations give flexible options and

time to comply so that districts can be thoughtful about investing as part of their broader plan to support students in need.

Thank you again for the opportunity to be here today.

[The statement of Mr. Sargrad follows:]

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**Testimony to U.S. House of Representatives Subcommittee on Early Childhood,
Elementary, and Secondary Education
Scott Sargrad
Managing Director, K-12 Education Policy
Center for American Progress
September 21, 2016**

Thank you to Chairman Rokita, Ranking Member Fudge, and members of the U.S. House of Representatives Subcommittee on Early Childhood, Elementary, and Secondary Education for inviting me to speak on the important topic of the “supplement not supplant” provision within the Every Student Succeeds Act (ESSA). My name is Scott Sargrad, and I am the Managing Director of K-12 Education Policy at the Center for American Progress.

Title I of the Elementary and Secondary Education Act was designed to provide additional resources to the most disadvantaged students in poor schools. But within years, it was clear that poor kids did not receive their fair share of education dollars.ⁱ

To address this inequity, Congress approved the first “supplement not supplant” provision in 1970 to ensure that districts did not use federal money to replace state and local dollars. On September 6 of this year, the U.S. Department of Education issued draft regulations on ESSA’s updated supplement not supplant provision, and in so doing, took another important step forward toward fulfilling the law’s intent.

Before I dive into the research and policy, I want to step back and note that we are not considering dry academic questions. Even as we sit here today, too many low-income students across the country sit in crumbling schools without access to the experienced and effective teachers, rigorous courses, and wraparound services that they need to have a chance at success. In fact, just two weeks ago, on an unseasonably hot September day, every school in Baltimore closed early because so many of them had no air conditioning, depriving these students of valuable learning time.ⁱⁱ

Money matters in education. And it matters particularly for students from low-income families. This is common sense—and it’s supported by a growing body of research. For low-income students, a 10 percent increase in per-student spending increased adult wages by almost 10 percent, according to a 2015 study.ⁱⁱⁱ Similarly, a 2016 study found that greater state spending on low-income students dramatically improved student learning in reading and math.^{iv}

Students in poorer schools, however, continue to receive less than their richer peers. In approximately 1,500 school districts across the country, there are about 5,700 Title I—or

poor—schools that receive on average \$440,000 less per year than wealthier schools.^v That's a lot of money. With \$440,000, a school could hire 8 new guidance counselors, or give a \$10,000 bonus to more than 40 teachers.^{vi}

This inequity also happens across districts. While there is significant variation across states, high-poverty districts spend an average of 15 percent less per student than low-poverty districts. In Pennsylvania, poorer school districts spend 33 percent less per-pupil than wealthier districts in the state.^{vii}

As a result of these policies, children of color often suffer the most. Indeed, compared to high-poverty and high-minority schools, wealthier and low-minority schools offer more rigorous core programs. Wealthier schools are twice as likely to offer a full range of math and science courses, offer three times as many AP classes and are twice as likely to offer dual enrollment opportunities.^{viii}

But these are not just facts and figures. Every day, real students walk into schools with so few resources that every one of us would say they are unacceptable for our own child. In one Detroit elementary and middle school, black mold covers the gym floor and the ceilings are full of exposed wires, wrote Lakia Wilson, a counselor at Detroit's Spain Elementary-Middle School, earlier this year.^{ix} And in the William Penn School District in Pennsylvania, students like Jameria Miller "race to class to get the best blankets" to stay warm despite the school's uninsulated metal walls.^x

From the passage of the original ESEA in 1965, the federal government's role has been to protect historically disadvantaged students and ensure that they have the same opportunities as their more advantaged peers. Beginning with the original supplement not supplant provision in 1970, the federal government has had a responsibility to enforce this requirement of the law. Today's ESSA is no different.

Districts have historically shown compliance with the supplement not supplant requirement by showing that every service purchased with Title I funds was "supplemental" and would not have been provided absent the Title I funds. This means that districts often limited their spending to programs that they could easily show were supplemental, such as pulling kids out of class for additional instruction, but that were not necessarily the most impactful.^{xi,xii}

The new law stops the short-sighted practice of making districts justify every purchase. Now districts must demonstrate that their *methods* of funding make sure that poor schools get their fair share.

Recognizing that historical funding inequities is a problem without an easy solution, the Department of Education provides in its proposed regulation multiple options for districts to demonstrate compliance, including allowing states to develop their own compliance test. The proposal also includes additional flexibility for districts with schools serving a lot of students with disabilities or English learners, those with small schools, and those with a

single school. What's more, the proposed regulations give districts additional time to comply, so they can phase in any changes needed to ensure poor schools are getting their fair share.

While this change will require extra efforts, it does not mean districts must use completely new strategies to distribute school funding. Under the proposal, more than 90 percent of districts would already be in compliance with supplement not supplant.^{xvi} However, we cannot rest on our laurels. Those remaining 10 percent or so of districts must do the hard work of showing that they are fairly supporting poor schools with state and local funds before the addition of federal dollars.

But it's worth it. Funding inequities for vulnerable children remain and we must close this gap because money matters, especially to students from low-income families. The department's regulations, which provide flexible options and time to comply, give districts the opportunity to be thoughtful about investing as part of a broader plan to support students who are most in need.

^{xvi} National Association for the Advancement of Colored People, Washington Research Project, "Is It Helping Poor Children? Title I of ESEA: A Report." (Washington, DC, 1969).

^{xvii} Saliqu Khan, "Baltimore County schools with no AC closed Thursday," *WBALTV.com*, September 8, 2016, available at <http://www.wbalv.com/education/baltimore-county-schools-with-no-ac-closed-thursday/41565598>.

^{xviii} Kirabo C. Jackson and others, "The Effects of School Spending on Educational and Economic Outcomes: Evidence from School Finance Reforms," 131 *The Quarterly Journal of Economics* 1, 157-218, (2016).

^{xix} Julien LaFortune, Jesse Rothstein and Diane Whitmore Schazzenbach, "School Finance Reform and the Distribution of Student Achievement," *The National Bureau of Economic Research*, Working Paper No. 22011 (2016), available at <http://www.nber.org/papers/w22011>.

^{xx} U.S. Department of Education, "FACT SHEET: Supplement-not-Supplant under Title I of the Every Student Succeeds Act," Press release, August 31, 2016, available at <http://www.ed.gov/news/press-releases/4-1-16-fact-sheet-supplement-not-supplant-under-title-i-of-the-every-student-succeeds-act>.

^{xxi} According to the Bureau of Labor Statistics, the median salary of a guidance counselor is \$53,610. See Bureau of Labor Statistics, "Occupational Outlook Handbook: School and Career Counselors," available at <http://www.bls.gov/ooh/community-and-social-service/school-and-career-counselors.htm> (last accessed February 2015).

^{xxii} Emma Brown, "In 23 states, richer school districts get more local funding than poorer districts," *Washington Post*, March 12, 2015, available at <https://www.washingtonpost.com/news/local/wp/2015/03/12/in-23-states-richer-school-districts-get-more-local-funding-than-poorer-districts/>.

^{xxiii} U.S. Department of Education, "FACT SHEET: Supplement-not-Supplant under Title I of the Every Student Succeeds Act."

^{xxiv} Lakia Wilson, "Detroit teacher: 'How can you teach or learn in conditions like these?'," *PBS NewsHour*, January 14, 2016, available at <http://www.pbs.org/newshour/updates/detroit-teacher-how-can-you-teach-or-learn-in-conditions-like-these/>.

^{xxv} Kevin McCorry, "The cold realities of education in a poor Pennsylvania school district," *NewsWorks*, April 24, 2016, available at <http://www.pbs.org/newshour/updates/detroit-teacher-how-can-you-teach-or-learn-in-conditions-like-these/>.

^{xxvi} Melissa Junge and Sheara Krvaric, "How the Supplement-Not-Supplant Requirement Can Work against the Policy Goals of Title I: A Case for Using Title I, Part A, Education Funds More Effectively and Efficiently," (Washington: Center for American Progress and American Enterprise Institute for Public Policy Research, 2012).

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- ^{xx} Richard L. Allington, "Policy Constraints and Effective Compensatory Reading Instruction: A Review," Paper presented at the Annual Meeting of the International Reading Association (Atlanta: 1984).
- ^{xxi} U.S. Department of Education, "FACT SHEET: Supplement-not-Supplant under Title I of the Every Student Succeeds Act."

Chairman ROKITA. Thank you. Dr. Gordon, you are recognized for five minutes.

TESTIMONY OF NORA GORDON, ASSOCIATE PROFESSOR, McCOURT SCHOOL OF PUBLIC POLICY, GEORGETOWN UNIVERSITY, AND RESEARCH ASSOCIATE, NATIONAL BUREAU OF ECONOMIC RESEARCH

Ms. GORDON. Chairman Kline, Chairman Rokita, Ranking Member Fudge, and members of the subcommittee, thank you for the opportunity to testify today.

For decades, compliance with supplement not supplant was tested by looking at each individual Title I expenditure. When this rule was in place, in 2014, in the course of my academic research, I interviewed district Title I managers across four States and found that compliance, not the effective use of funds, was their central concern. But despite their concern and attention to compliance, administrators were confused about what was and was not legal. What districts did understand was that Title I should only support extra things that were different from the core curriculum.

This led to districts purchasing staff or services with Title I that were often unaligned with a core curriculum because they were easy to audit under the old rule rather than because of student needs.

Meanwhile, research suggests that effective school improvement requires comprehensive strategies and alignment to good curriculum, not an assortment of add-ons.

The problems with the old supplement not supplant rule have been around and documented by researchers since the 1970s. When it looked like reauthorization of ESSA might be possible in 2012, the left-leaning Center for American Progress, Mr. Sargrad's organization, and the right-leaning American Enterprise Institute jointly published recommendations describing how supplement not supplant should be fixed.

CAP and AEI stated that the test currently in use should be replaced, and I quote, "with a simpler, more objective test, specifically: if districts can document that the manner in which they allocate state and local resources to schools is "Title I neutral," they should be clear of suspicion around supplanting of nonfederal funds with Title I dollars."

ESSA's new supplement not supplant test follows those recommendation and transforms what was already an option for schoolwide programs under No Child Left Behind and makes it the compliance standard for all Title I schools.

As Ranking Member Fudge noted, ESSA absolutely does not waive the requirement to supplement not supplant. It is just the opposite; that language in the statute itself contains a compliance standard which could set an auditable test for supplement not supplant.

The standard as presented in plain language, which may contribute to very common misperceptions that the law has no test and without regulation supplement not supplant, cannot be enforced. In short, districts have to explain how they are funding their schools and show that this method ensures that each Title I

school receives all of the State and local funds it would have if it did not participate in Title I.

In July 2015, the department itself explained how a district could pass such a test for its schoolwide schools. The language of ESSA simply expands the schoolwide approach to supplement not supplant under No Child Left Behind to all Title I schools.

The department's proposed rule takes an entirely different approach to supplement not supplant than the statute's language or the department's own previous guidance on the topic. It mandates that Title I schools get a certain baseline of State and local funds measured in dollars. This approach essentially requires ad hoc adjustments in school level resources instead of a consistent and transparent allocation methodology.

The goal of greater equity here is critical. Mr. Sargrad's testimony highlights how high the stakes are on getting equity right, but the department's approach does not get it right. It has major potential negative policy and practical implications, including districts needing to cut entire programs, like music, art, or PE, in order to get the money they need to make the numbers come out right; putting more expensive but less effective teachers into Title I schools; the potential to reduce local support for public schools and the taxes that support them; the possible loss of State and local funds for low-income schools that do not participate in Title I, and there are many of these schools.

I just want to briefly turn to the cost-benefit analysis the department has offered and state this is a superficial analysis, and the data it is based on are not reliable. The department does not know and cannot know how districts will respond to the rule. This is the whole issue, how will districts respond, and that is what will determine the cost and the benefits to students.

ESSA also contains a critically important new reporting provision that requires districts to report per pupil spending data at the school level. This will result in much greater transparency, but it will take time to implement.

The department should help districts develop good transparent systems that generate reliable spending information rather than proposing a complicated rule that could hurt the very students it aims to help.

[The statement of Ms. Gordon follows:]

Testimony before the U.S. House Subcommittee
on Early Childhood, Elementary, and Secondary Education

September 21, 2016

Hearing on
“Supplanting the Law and Local Education Authority Through Regulatory Fiat”

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Note: the views expressed here are my own and do not necessarily reflect those of
Georgetown University or the National Bureau of Economic Research.

Chairman Rokita, Ranking Member Fudge, and Members of the Subcommittee, thank you for the opportunity to testify today. I am Associate Professor at Georgetown University's McCourt School of Public Policy and Research Associate of the National Bureau of Economic Research. I study US education policy and finance, especially Title I.

First I'll explain how Congress changed the law on supplement not supplant in response to problems school districts had spending their Title I funds effectively. Next I'll describe how the proposed rule is on a totally different topic: how districts distribute state and local revenue across their schools. In fact, part of the proposed rule is extremely similar to the amendment Sen. Bennet offered and withdrew—on the comparability requirement, not supplement not supplant. I will outline negative equity implications of the proposed rule and weaknesses of the cost-benefit analysis offered in the proposed rule.

Supplement not Supplant Prior to ESSA

For decades, compliance with supplement not supplant was tested by looking at each individual Title I expenditure. Expenditures could not violate any one of these three 'presumptions of supplanting:'

- (1) they were required by law;
- (2) they had been supported with state or local funds in the previous year; or
- (3) they were simultaneously provided to non-Title I students with state or local funds.

Historic Problems with Supplement not Supplant

In 2014, I interviewed district Title I managers across four states for my research, and several key themes emerged.¹

1. Compliance, not the effective use of funds, is a central concern for school district Title I administrators.

States must approve districts' Title I spending plans, and districts quite rationally want the most straightforward path to state approval in order to get their federal funds on time. Because the old SNS rule was so complicated and misunderstood, however, compliance was difficult and required a great deal of administrative energy.

¹ Gordon, Nora and Sarah Reber. 2015. "The Quest for a Targeted and Effective Title I ESEA: Challenges in Designing and Implementing Fiscal Compliance Rules." *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 1(3), 129-147. Accessed 09/19/16 at: <http://www.rsfiournal.org/doi/abs/10.7758/RSF.2015.1.3.07>.

² Center for American Progress and American Enterprise Institute. "Reauthorization of the

2. Despite their concern and attention to compliance, administrators were confused about what was and was not legal.

Confusion by both districts and states about what was permitted under SNS meant that districts often didn't propose costs because they didn't want to get into a fight with their states and hold up the delivery of their Title I funds..

3. The clearest message districts perceived under the old regime was that Title I should support supplemental, extra things and could not support core instruction.

School district personnel often felt pressured to use Title I for costs that were clearly extra, and different. In practice, this often meant unaligned from the core educational program. This often prevented districts from using Title I for comprehensive interventions, such as instituting dropout prevention programs, positive behavioral supports or arts integration programs – all of which are allowed under Title I – because they didn't look “different” enough to be extra. This promoted spending on add-ons, such as “extra” reading programs (which were often unaligned), or other pull out activities – because they were easy to audit under the old rule.

Meanwhile, research suggests that effective school improvement requires comprehensive strategies, not a hodge-podge of add-ons.

ESSA's Fix to Problems with SNS

The problems with the old supplement not supplant rule have been around and documented by researchers since the 1970s. Over the years, Congress has attempted to fix them, developing and expanding eligibility for schoolwide programs. Congress then allowed schoolwide programs to use a different compliance test in which they show that they allocated state and local funds to schools in such a way that did not result in Title I schools getting fewer state and local resources than they otherwise would have. Prior to ESSA, because of confusion over the schoolwide flexibility, most districts continued to rely on the three presumptions even for their schoolwide programs.

In 2012, the left-leaning Center for American Progress and the right-leaning American Enterprise Institute jointly issued a report detailing how supplement not supplant distorted districts' choices about how to spend Title I funds, and limited the efficacy of program funds. Both CAP and AEI wrote that they:

...embrace the option that would make SNS amenable to innovation while greatly reducing the burden of compliance. The idea is to replace the primary test currently in use with a simpler, more objective test, specifically:

- If districts can document that the manner in which they allocate state and local resources to schools is “Title I neutral,” they should be clear of suspicion around supplanting nonfederal funds with Title I dollars.²

This message was similarly embraced in a bipartisan manner during the reauthorization process for ESSA.

ESSA’s “new” supplement not supplant test transforms what was *already* an *option* for schoolwide programs under NCLB, and makes it the *compliance standard* for all Title I schools. As described in the Senate committee report on S. 1177 (note that the final statute retains the same supplement not supplant language referenced):

Specifically, **the bill allows States and LEAs to comply with SNS for title I, part A funds if they can document that the manner in which they allocate State and local resources to schools is ‘Title I neutral,’ or that the methodology does not account for the title I funds that schools will receive.** Additionally, the bill removes requirements in regulation that force LEAs to identify individual costs or services as supplemental. Instead, the way in which State and local resources are allocated to a school must be examined as a whole to ensure that the methodology does not account for title I funds the schools will receive. This language will provide more flexibility for schools to utilize title I funds to implement comprehensive and innovative programs. LEAs will be able to demonstrate SNS compliance in a much less burdensome and restrictive way, while still making clear that Federal dollars are supplemental to State and local dollars and not be used to replace them. (Emphasis added.)

Many people seem to think that without regulation, there would be no auditable test of supplement not supplant under ESSA. *This is not true.* The test is described in Sec. 1118(b)(2) of the law:

To demonstrate compliance with paragraph (1), a local educational agency shall demonstrate that the methodology used to allocate State and local funds to each school receiving assistance under this part ensures that such school receives all of the State and local funds it would otherwise receive if it were not receiving assistance under this part.

In July 2015 guidance, ED itself explained how a district could demonstrate it has a Title I-neutral resource allocation methodology for schoolwide schools. The

² Center for American Progress and American Enterprise Institute. “Reauthorization of the Elementary and Secondary Education Act Offers a New Chance to Improve Education: Joint Recommendations on Needed Changes to Title I.” March 2012. Accessed 09/19/16 at https://cdn.americanprogress.org/wp-content/uploads/issues/2012/03/pdf/titleI_recs.pdf.

language of ESSA simply expands the schoolwide approach to SNS under NCLB to all Title I schools.

The Department of Education's Proposed Rule

The Department of Education's proposed rule takes an entirely different approach to SNS than ESSA's language or the Senate conference report.

ESSA's language states that compliance with SNS should be tested by ensuring that the *methodology* used to distribute state and local funds ensures that a Title I school gets all of the money it would have if it did not participate in Title I.

However, ED's proposed rule bases its test for compliance on *actual dollars, not a methodology*. It gives districts four possible ways of allocating funds, all of which mandate that funding be roughly equal, based on actual dollars.

Negative policy and practical implications of proposed rule

The goal of greater equity is critical, and school districts and states absolutely need to tackle improved spending equity head on. However, the approach that ED takes has important negative policy and practical implications for Title I and other low-income schools, as well as for public schools in general. These include:

- *Less school-level decision-making.* In order to comply, a district's central office will need to manage all spending decisions – such as hiring, purchasing, and other programming decisions that require money. School-level decisions on whom to hire and what to buy would have to be overturned by central office staff if those choices resulted in numbers that do not comply with the rule.
- *Instability in school staffing in places that cannot raise additional state and local money.* Because staffing costs are typically the largest cost center, the shifting of teachers and other school staff would likely be necessary in order to comply with the proposed rule
- *More expensive but less effective teachers in Title I schools.* In some districts, non-Title I schools will need to reduce costs, but will likely seek to keep their best teachers. This could mean more expensive, but worse teachers being assigned to Title I schools. This would comply with the proposed rule, but not promote equity.
- *Cutting entire programs* in a district – like music, art, or PE – in order to get the money to make the numbers meet the compliance requirement. Districts could also choose to cut programs with high cost variability that complicate compliance from year to year.

- *Reducing local support for public schools and the taxes that support them.* If programs that are important to a district are lost, and that impacts support for local levies or other taxes, the rule could level spending down, not up.
- *Changing which Title I eligible schools get the federal funds,* to meet compliance goals rather than programming goals. Depending on district finances, they could choose to spread federal funds more thinly to more schools, or to cut Title I from some currently participating schools—solely to pass the test.
- *Possible loss of state and local funds for low-income schools that do not participate in Title I.* It's a common misperception that Title I and non-Title I schools break down by poor vs. affluent status. However "affluent" is not a synonym for "non-Title I." Which schools participate in Title I varies greatly by district. Some districts choose to concentrate Title I funds in only their very highest poverty schools in order to give those schools more money. For example, a district may only serve schools at 90% poverty or above with Title I. This means that all other poor schools in that district that are *Title I eligible* – schools in the 35% to 89% poverty range – are not Title I schools. Most would agree that schools in this poverty range are not affluent. The proposed rule could result in these kinds of high-poverty, Title I eligible schools losing state and local funds, in order to make the numbers balance to meet the proposed rule.

Flawed cost-benefit analysis and unreliable data

OMB has deemed the proposed rule "economically significant" and therefore subject to a higher standard of cost-benefit analysis. But the cost-benefit analysis ED has offered thus far is both superficial and based on unreliable data. Many school districts do not have accounting and financial management systems that can accurately capture per pupil financial data. The data ED is using, which districts have reported through the Civil Rights Data Collection, have not been validated against other administrative sources.

The biggest problem with meaningful cost-benefit analysis is that both the costs and benefits of the rule would depend on how districts respond to it—which ED doesn't know. So instead it estimates the amount of dollars that districts would need to newly generate or to shift from non-Title I to Title I schools to comply with the rule using the unreliable CRDC school-level financial data. ED also presents very optimistic estimates of the administrative costs of compliance. The most important costs, however, are the ones ED does not discuss at all: the costs to *students* through changes in staffing and programming that districts make to comply with a test based on dollars, rather than methodology.

Without knowing the choices districts will make to comply with this rule, it is impossible to estimate the benefits of the proposed rule. For example, the cost-benefit analysis does not address some of the issues I flag above as actions a district might take in order to comply with the rule – such as moving expensive but less effective teachers to Title I schools, or cutting entire programs such as music in a district in order to free up money for Title I schools. Without taking these types of choices into account, a true cost-benefit analysis is impossible.

ESSA's New School-Level Financial Data Reporting Requirements

Finally, ESSA contains a critically important new reporting provision that requires school districts to report per-pupil spending data at the school level. This will result in much greater transparency, but it will take time to implement.

In order to do this reporting well, many districts will have to improve or obtain new accounting and financial management systems. All districts will need further guidance from ED on how to allocate costs to schools that are typically captured at the district level such as special education staff, transportation, and maintenance costs.

By not waiting for districts to get good per pupil spending data, ED is putting the cart before the horse with the proposed rule. ED could help districts develop good and transparent systems that generate reliable spending information which would give communities the important information they need to shine a light on inequity where it exists. Instead, ED is proposing a complicated rule that has the negative implications—for both equity and efficiency—that I discussed above.

Chairman ROKITA. Thank you very much. I am going to recognize myself for 5 minutes of questioning. I find it very interesting, Dr. Gordon, that not only is the department going in a completely opposite direction of what Congress intended in this bipartisan law, but what you are saying is it is going against its own guidance previously issued. Is that right?

Ms. GORDON. It is changing the direction. It is much more specific than its previous guidance.

Chairman ROKITA. Right. I want to focus also on this issue of congressional intent, Dr. Gordon. Your testimony highlighted this 2012 recommendation by the Center for American Progress and the American Enterprise Institute.

The recommendation, which is quoted up on the screen here on the slide, was to simplify the long-standing supplement not supplant provision so that school districts would only have to show the State and local funding allocations to schools are, quote "Title I neutral," unquote.

You mentioned in your testimony that the gentleman sitting to your right is from the Center for American Progress.

It seems to me that this report, this idea, from a left leaning group, organization, and a right leaning group actually is what we did in the law. Is that correct, Title I neutral?

Ms. GORDON. Yes.

Chairman ROKITA. Due to the reforms adopted by Congress last year, specifically in Section 1118, the law now includes this recommendation, again, shown on the screen, to ensure States allocate funding in a Title I neutral manner. Is that correct?

This recommendation that we are showing on the screen is what you believe to be what we wrote into the law and signed by the President?

Ms. GORDON. Yes.

Chairman ROKITA. Now, is it true that the identical language originated in the bipartisan proposal that was negotiated by Senator Alexander and Senator Murray? Did you follow those negotiations?

Ms. GORDON. Yes.

Chairman ROKITA. And is this the same thing?

Ms. GORDON. Yes.

Chairman ROKITA. In fact, as you point out in your testimony, the bipartisan committee report for the Senate bill, now showing that on the screen, explains the congressional intent for this language. Are you familiar with this language? Is this what we ... ?

Ms. GORDON. Yes.

Chairman ROKITA. Alright. It is certainly what I remember. Dr. Gordon, given the clear legislative history behind this provision and the unambiguous bipartisan explanation of the provision contained in the Senate committee report, is there any conceivable honest way to argue that Congress intended this provision to be implemented in the way that the department is now proposing?

Ms. GORDON. Not that I can imagine, no.

Chairman ROKITA. That was the question. Thank you very much. I appreciate that. Dr. Canavero, do you have anything to add to this discussion we are having, this line of questioning?

Mr. CANAVERO. Chairman Rokita, I do not have anything to add. I will just say obviously we are supportive of the language that is the law. We believe that is a fair test for demonstrating compliance for Title I, and we applaud the changes in ESSA that allow a more schoolwide determination as opposed to the classic and historic compliance-based expenditure test that we have been working under so far.

Chairman ROKITA. Well, I thank you for being for it. We all have been for it. We all voted for this thing. The only ones that do not seem to be for it now is the department, which again is why we are here.

Mr. Owens, do you have anything to add?

Mr. OWENS. Thank you, Mr. Chairman. I think again the test that is created in statute is the one that should drive the work of the department, which is very clearly whether the Title I schools receive all the State and local funds to which they were entitled, which is far and away very different than trying to look at an equalization of expenditures of State and local resources.

Chairman ROKITA. Thank you. And I will yield back and recognize the chairman of the full committee, Mr. Scott, for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Chairman ROKITA. Long time before you retire. Mandy days. Excuse me, the ranking member of the full committee, Mr. Scott.

Mr. SCOTT. There is no objection.

Chairman ROKITA. The gentleman did not notice.

Mr. SCOTT. It just came so naturally, I did not notice. Thank you, Mr. Chairman. Mr. Sargrad, when you talk about to which entitled, is it not a fact that schools attended by low-income students are chronically underfunded?

Mr. SARGRAD. Yes, that is right.

Mr. SCOTT. When we wrote the law, is there any question that we intended a change in the way it would be calculated, that is to say we required new rulemaking to make sure we had a new standard?

Mr. SARGRAD. Yes, that is very clear.

Mr. SCOTT. How did you interpret the effect of that new standard?

Mr. SARGRAD. That it moved from an activities and services based test to a funds based test, to ensure that schools received all the funds they are entitled to.

Mr. SCOTT. And how low can you get in terms of underfunding before you get out of compliance, according to the old standard?

Mr. SARGRAD. There is no limit, you could be significantly underfunded.

Mr. SCOTT. You mentioned a lot of district to district comparisons, what about within the district comparisons? Are there districts that have students going to low-income schools receiving significantly less per student than those going across town within the same district?

Mr. SARGRAD. Yes, there are significant gaps in many districts.

Mr. SCOTT. How does the new standard deal with that?

Mr. SARGRAD. It simply ensures that the Title I schools receive the State and local funds that they are entitled to.

Mr. SCOTT. And that would mean that they would receive the funds and then the Title I funds would be on top of that, would supplemental to what they should have gotten in the first place?

Mr. SARGRAD. That is right.

Mr. SCOTT. Mr. Canavero, you indicated that the financial standard by itself is too narrow. Is that right? You ought to consider other activities like AP courses, CTE courses, arts, effective teachers, things like that ought to part of the calculation?

Mr. CANAVERO. Correct, sir.

Mr. SCOTT. Does that mean total dollars spent, should you not at least have the money equal before you get into the other activities? If you ought to consider other things, ought not the money get straight before you go to the other activities?

Mr. CANAVERO. Certainly, sir. The notion of providing these opportunities to all students is critical.

Mr. SCOTT. Within the district, are there disparities in terms of funding before you get to the Title I funds?

Mr. CANAVERO. Are you asking specifically what the district within Nevada or general?

Mr. SCOTT. Within school districts. Are there school districts that before you get to the Title I money fund schools attended by low-income students, are they getting more or less generally than those attended by high-income students?

Mr. CANAVERO. The only detailed knowledge I have is within my State, and generally speaking, they are all funded equally.

Mr. SCOTT. All of the Title I schools get equal funding before you get to the Title I funding?

Mr. CANAVERO. That is correct, sir, and there are obviously some nuisances related to cost of teachers within those programs or as I mentioned in my testimony, the creation of choice based programs that are meant to break down historic enrollment patterns, related magnet schools in particular, signature academies, whatever you want to call them.

Mr. SCOTT. Does the teacher calculation reflect the fact that traditionally more effective teachers tend to teach at the schools attended by high-income students rather than low-income students, and so the payroll at schools attended by high-income students would be higher than those attended by low-income students?

Mr. CANAVERO. Historically, the discussion has not been around effectiveness and pay, it has been around tenure and pay, the longer they have been in service. What we find in Nevada in particular is that under a significant shortage of teachers, those shortages, however, are not equally spread. We found that they are disproportionately spread with some hard to fill schools such as those with students in poverty and communities in poverty.

Mr. SCOTT. And so the payroll at the low-income school will be significantly lower than that at a high-income school?

Mr. CANAVERO. It may be.

Mr. SCOTT. Generally speaking.

Mr. CANAVERO. Yes.

Mr. SCOTT. Thank you, Mr. Chairman. I yield back.

Chairman ROKITA. I thank the gentleman. Now, let me take this opportunity in high honor to introduce the chairman of the full

committee, a great American, and most importantly, a benevolent and forgiving leader, Mr. Kline, for 5 minutes.

Chairman KLINE. Clinging fearlessly to my job and title for a few more weeks, I thank the chairman.

The discussion here fundamentally is about what happens when the Congress takes a bill, works it through, passes it, the President signs it into law, and you have a new law, and an administration, any administration, then goes through the regulatory process and starts to promulgate regulations to allow for the implementation of that law.

The issue is that the administration, any administration, is not allowed to decide what parts of the law it wants to enforce and what parts it wants to change and what parts it wants to leave out. The administration is not allowed to rewrite law.

And so, there are some of us who feel like that is in fact what is happening here with this administration and this Secretary's implementation of the Every Student Succeeds Act.

So, Dr. Gordon, I want to come back to you and go through a pretty step by step series of questions and answers so this will be perfectly clear, at least to me and you. I am going to go down the same line that Chairman Rokita was taking up in his questions.

So, Dr. Gordon, the Center for American Progress and the American Enterprise Institute had a specific proposal addressing supplement not supplant, and that proposal was adopted by Congress. Is that correct?

Ms. GORDON. Yes.

Chairman KLINE. And these two organizations also recommended Congress address actual per pupil spending of State and local funds through the law's comparability provision. Is that correct?

Ms. GORDON. The Center for American Progress did, yes.

Chairman KLINE. Right. Okay, right. Does the department's regulatory proposal that we are discussing today reflect the goal behind that proposal?

Ms. GORDON. The comparability proposal?

Chairman KLINE. Yes.

Ms. GORDON. Yes.

Chairman KLINE. But did Congress change comparability or any other provision in any way consistent with that proposal?

Ms. GORDON. No.

Chairman KLINE. No, that is right. In fact, in the Senate, Senator Bennet offered a specific amendment on comparability that reflected the goals of the organizations' proposal. Did the Senate adopt the Bennet amendment?

Ms. GORDON. No.

Chairman KLINE. No. In the House, our colleague, the ranking member of this subcommittee, also offered an amendment with similar goals. Did the House adopt the Fudge amendment?

Ms. GORDON. No.

Chairman KLINE. No. So Congress explicitly rejected proposals to address actual per pupil spending in the law, but did adopt the AEI/CAP recommendation to make this information transparent, right?

Ms. GORDON. It adopted the CAP/AEI recommendation about having a methodology based test of supplement, not supplant.

Chairman KLINE. Thank you. I probably had too many words in my question. Thank you. So, to summarize, Congress was aware of recommendations to address actual per pupil spending, as we just noted, in both the House and Senate, but on multiple occasions, flatly rejected this idea selecting instead to require States and school districts make per pupil spending public, yet here we are today examining a regulatory scheme put forth by this administration that Congress explicitly rejected, and that I believe will wreak havoc on communities across the country.

So, Dr. Gordon, again, staying with you, is there any conceivable way to interpret the law's supplement not supplant or comparability provisions as requiring any form of equalized spending between Title I and non-Title I schools?

Ms. GORDON. No.

Chairman KLINE. Exactly. Thank you very much. I yield back.

Chairman ROKITA. I thank the gentleman. Ms. Clark, you are recognized for 5 minutes.

Mrs. CLARK. Thank you, Chairman Rokita, and Ranking Member Fudge, and to all the panelists for being here today.

First, I want to give Mr. Sargrad a chance to respond to the line of questioning we have had for Dr. Gordon. If you could tell us about CAP's role in this definition and how you see the implementation of the current supplement but not supplant rolling out, and is it in line with your research?

Mr. SARGRAD. Thank you, yes. So there are a couple of things that I would want to say to this, the first is that just like in the law, Congress decided to change to a funds based supplement not supplant test but did not go into specific details about how the department might enforce that requirement and how precisely districts would comply, our recommendation also was a policy recommendation that I think we anticipated, although I was not at the Center for American Progress in 2012—we anticipated an administration would need to go through rulemaking to interpret and to make sure at the districts were complying.

The second point that I would make is that the recommendation around distribution of funds being Title I neutral, is that if that method results in shortchanging Title I schools, it seems pretty clear that is not Title I neutral, and so that is a key piece of the recommendation and a key piece of how we believe the law should be implemented.

Mrs. CLARK. Thank you. I wanted to follow up also with Dr. Canavero. In your testimony, you stated that, quote "One of the most important aspects of the ESSA is its focus on equity," and I could not agree more. And you have set forth some of your victory schools program where I believe the State of Nevada put 25 million dollars into low-income schools, as you described different programs, social workers, arts, other programs that you felt were necessary.

But absent from your list of your State's ongoing effort to implement is your State's effort to implement the most expansive private school tuition tax credit in the Nation, one that gives 51 hundred dollars to private school tuition regardless of family income. This in a state where you are the seventh highest percentage of children

living in poverty in Nevada, and at least according to the Ed Week report card, the lowest ranking school system in the country.

I am curious, how do using these public funds intended for public education, as we are here talking about how we can best serve our lowest income students, how does that further your State's focus on educational equity?

Mr. CANAVERO. Thank you for the opportunity to respond, Representative Clark. So that is obviously a legislative directive from the State legislature that is presently tied up in the courts. And so, to the extent that I can control the legislature, which I cannot, that is what it is.

I can tell you definitively that in a State with a Republican Governor and a Republican controlled legislature, in 2015 to raise taxes to fund education, acknowledging the need in our State, the undeniable need in our State to improve outcomes for students, given all that you have just suggested and more, fundamentally reflects, I think, the general commitment of our State and our leadership in our State to making things work, and to become, I think, at the end of the day the fastest improving State in this Nation.

We recognize the challenges before us and we placed major investments down to remediate those efforts.

There are a number of other . . .

Mrs. CLARK. Is it not true, Dr. Canavero, that the Nevada State Treasurer has estimated that this program if fully implemented, and at this point 80 percent of the applicants for this tax credit are higher income, only 11 percent are in your 40th or below in income levels, so only 11 percent really beginning to touch the bottom 40th of earners, that could divert up to \$200 million from public schools.

Do you think there is a feeling in Nevada, in the State legislature, that equal amounts of tax credit builds equity into the system?

Mr. CANAVERO. I think that is a question that the legislature and individual legislators could answer. It is not within the Department of Education, as you recognize. It is within the Treasurer. To the extent it is implemented, it is implemented, and obviously, I follow the State's laws.

Mrs. CLARK. Thank you. I yield back.

Chairman ROKITA. I thank the gentlelady. Mr. Thompson, you are recognized for 5 minutes.

Mr. THOMPSON. Chairman, thank you. Thank you for members of the panel for being here on this important topic.

Let me bring our discussion right back to where it is supposed to be, on the United States Department of Education, and quite frankly, the intent of Congress. Because that is the friction point we have at this point. My question I will open-up to all.

Most of you have talked to some extent about the potential impact on special programs, things like career and technical education, magnet schools, art programs, physical education mentioned. I am sure there may be others. Be curious to hear what others you have concerns about with how the department is moving ahead contrary to the intent of Congress.

Can you explain more about why these programs will be at risk and how those programs are addressing equity concerns? Let's start with Dr. Canavero, please.

Mr. CANAVERO. Certainly. Thank you, Representative Thompson. In my testimony, I did mention career and technical education, career and technical academies, magnet schools. These are not provisions within the exceptions that are currently listed within the regulations.

My concerns are as follows: they are expensive. Magnet school programs are expensive. Career and technical academies are expensive. Career and technical education is expensive, and rightfully so given the infrastructure that needs to be built out in order to provide students the opportunity for either real world experience in a career/tech-ed or skill based work, or whether it is in a magnet school specifically focused on law, for example, or culinary.

Magnet schools themselves, if my memory serves me correctly, began in the 1970s in response to there was a clear opportunity to increase or decrease segregation in our schools, and they provided an opportunity, open enrollment opportunity to students. Typically, they are theme based. An opportunity to enroll students outside of a traditional attendance boundary. That is indeed what we see across our State, is that there are—they have waiting lists. We could do and obviously fill more.

If we utilized the level funding test, in my testimony, my fear is that school districts will be incentivized to lower the offerings at magnet schools or career and technical education programming in order to equalize the funding across, even though those opportunities are made available to and many students participate in the magnet school and career/tech academies across our State from low-income.

Mr. THOMPSON. Just to follow up on that, you mentioned the cost of career and technical education. Truly, if we are meeting market demands and we are educating, and my understanding was career and technical education, the dropout rate there is much lower than in traditional education settings, but there is a cost, if it is welding, medicine related, agriculture, machining.

If those are where the costs occur obviously with this equalization that the Department of Education is trying to pursue, essentially if you do not have state-of-the-art equipment, you are not really preparing the students with the competencies to go right into the workforce. That is my concern. Is that accurate?

Mr. CANAVERO. Representative Thompson, that is accurate, and that is the genesis really and the nature of my testimony. Again, reflecting absent additional dollars in the system, you would need to make decisions that may mean that you have to lower or reduce course offerings or reduce expansion of magnet programs or reduce career and technical academies or reduce career/tech ed in order to meet the fiscal test proposed.

Mr. THOMPSON. Thank you. Mr. Owens, any thoughts/impacts on the types of programs we have been reflecting on?

Mr. OWENS. Thank you, Representative Thompson. I would just echo Dr. Canavero's statements regarding the career technical component. In Oklahoma, we have Statewide open enrollment, open transfer, so students can move freely between districts, when they get within the open enrollment process, to access the programs that are most beneficial to them and meeting their needs.

So again, any of those programs that have cost variability components really become intolerable under a rule that really promotes uniformity of spending. So the example I cited in my testimony that the Financial Academy, at the Title I school, John Marshall Mid-High, has a banking center inside the school, it brings students from universities in to help Oklahomans do their taxes, those costs that you can't control at a district level become programs that have to be wiped away.

Mr. THOMPSON. Thank you, Chairman. I yield back.

Chairman ROKITA. I thank the gentleman. Ms. Bonamici, you are recognized for 5 minutes.

Ms. BONAMICI. Thank you very much, Chairman Rokita and Ranking Member Fudge. Implementing the Every Student Succeeds Act is going to further the goals of equity, and I am glad that seems to be something everyone agrees on is going to help all of our children across the country, students of color, low-income students, Native students, English learners, students with disabilities.

And certainly the supplement not supplant requirement plays a critical role in achieving this goal. I know educators, parents, and students in high poverty schools are frequently shortchanged, and reports show that about 40 percent of Title I schools receive less personnel funding per pupil than non-Title I schools, and schools that serve almost entirely students of color receive about \$700 less per student than schools that are predominantly white.

There is a disparity that needs to be addressed, and it is especially troubling if we know that in some cases, it is not just equal funding that is equitable, the schools serving communities of concentrated poverty actually need additional resources and support. I think that is the goal.

When Congress added this supplement not supplant requirement to ESSA back in 1970, I was not here then, but I think that was certainly the goal, so that those high needs schools would receive that additional support, and for decades Congress has stood by that principle.

I am a former State legislator and I think many of us are, and understanding that need to send that message that these Federal dollars are not to replace your K-12 investment.

We had a hearing in June, and Chairman Kline noted that the law, that ESSA, requires districts to show that funds are distributed fairly before they receive Title I dollars. And I do not think anyone disagrees with that, I mean that is certainly the intention here.

And to uphold our intention, Congress expects the Department of Education to enforce the supplement not supplant requirement, so there need to be some clear standards. I do not think anyone would disagree with that.

I wanted to ask you, Mr. Sargrad, one concern that we have heard is that this supplement not supplant requirement could force districts to reassign teachers in ways that may not be in the best interest of students. As the law supports a move to greater equity, I want to make sure it does not create undue disruption for hard working educators, and given your expertise as a teacher and an official responsible for overseeing Title I, how will States and districts be able to create greater parity in school funding while also

minimizing that uncertainty for educators and making sure that school staffing decisions are really driven by the needs of the students.

And if when you are discussing this, could you talk about the difference between like large urban districts. I have 25 school districts in my congressional district, and they really differ. Some of them are very large and some of them are very small and rural. So would you talk about that as well, and how this might affect the difference between rural and urban schools, but really with a focus on whether this is going to create undue disruption for educators.

Mr. SARGRAD. Thank you, Representative Bonamici, I am happy to talk about that. I absolutely agree with a lot of what folks have said here today, that forcing transfers of teachers is a bad idea. It is bad practice and it is not a good idea for students and it is not a good idea for teachers.

But this proposed regulation will not require districts to do that. There are multiple ways that districts can get additional resources to poor schools without moving teachers around. They could pay teachers more. They could provide incentives for teachers to teach in these hard to staff low-income schools. They could invest in these schools in wrap around services and make sure every low-income school has a guidance counselor and a school nurse and librarian, which many of them do not. They could extend the school day or extend the school year in these schools to make sure students have enough time to learn what they need to learn to be prepared for college or for a career.

And they can change their systems for funding, and they can move to things like weighted student funding formulas that provide additional resources for students with disabilities, low-income students, and English language learners.

So there are lots of ways to get these resources to the low-income schools, and I think the proposed rule does give time for districts to figure this out, and they do not have to make decisions right away about how they are going to do this, but they can be thoughtful about how they are going to make sure these schools get the resources that they need.

And I think to your question about the differences in districts, I think that is a really important point. And I think there are huge differences between a large urban district and a small rural district or a mid-sized suburban district, and they do have different options on how to comply with some of these requirements.

And I think it is absolutely right there is not a single test here. I think the fact that there are multiple options and there is additional flexibility for specific unique circumstances, and that there is an option for States to be able to develop their own test here is very important.

Ms. BONAMICI. Thank you very much. I see my time has expired. Thank you, I yield back. Thank you, Mr. Chairman.

Chairman ROKITA. I thank the gentlelady. Mr. Grothman, you are recognized for 5 minutes.

Mr. GROTHMAN. Sure, Mr. Canavero, I have a couple of questions. But first, I would like to congratulate your State; I was not aware they had passed a program allowing poorer kids, all kids, to attend schools of their choice. There are so many backward looking

people who hate these programs because they think that if they send their children to a private school, they should not have the school watered down with other kids. Maybe they do not want their children going to school with, and I think it took a lot of guts of your legislature to do that, so you can say I congratulate them for looking out for the kids.

I used to be in the State legislature, and I understand the interplay between State and local authority. Your testimony discusses ambiguity for the States in balancing their Federal enforcement obligation with the realities of State and local laws that may limit a district's ability to comply or a State's ability to enforce compliance.

Can you describe the kind of State and local laws you are talking about and how they might conflict with this rule, and can you describe the process that State and locals will have to undertake to come into compliance with the department's proposal?

Mr. CANAVERO. Certainly, Representative. So there are a few examples here, one that I pull from my interactions with other chiefs and with the [11]CCSSO, the Council of Chief State School Officers, relates to levies or bonds that are specific to providing and raised by a district for a specific activity or tied to a specific program.

And, if in fact that bond issuance or that levy conflicts with the adjustment of resources that would be required under the regulations or otherwise directed differently, how the local system, how the local school district, would balance that tension between what the levy requires or what that bond commitment requires as acted on by the voters versus how to remain compliant with the Federal rules. So that would be one.

The other maybe specific to Nevada is related to—it is part of the ambiguity that we seek to get clear on, is related to State initiatives around investments in schools, and what that would translate to for a local education agency or a school district in identifying their weights in compliance with this particular provision.

So there would be some tension there specifically the laws, that is something we continue to review, as a chief in my State, we continue to review, but knowing again from a national discussion, there is some concern related to the ability for districts to both fulfill the obligations of a levy or a bond issuance and be compliant.

Mr. GROTHMAN. Okay. I have a question. Does this requirement apply not only within a district but to a State as a whole?

Mr. CANAVERO. My review of the regulations requires the LEA, the district, to be compliant. Obviously, there is a State role to be played here. You heard earlier the role that a State could play which is to create its own algorithm.

Mr. GROTHMAN. I'll give you a question. They only give us 5 minutes. One of the things that surprises me, at least in Wisconsin, maybe Wisconsin is an anomaly, I do not think there are significant differences at all from school to school within a district.

There are differences in spending between districts, but I would think for an average district, if they have 5 or 10 elementary schools, they probably all get almost identical amounts of money. Is that the norm, or are there districts around the country — I will ask any of you in which—really, within the same district, different elementary schools are getting wildly different amounts of money?

Mr. SARGRAD. I would say that this is part the key piece of this supplement not supplant provision, and the department's regulation, that in 90 percent of districts, this is probably not an issue, but in 10 percent of districts, there are significant differences between low-income and high-income schools, and for those students, those differences really matter.

Ms. GORDON. I could just add to that, the districts where there are differences, it may not be apparent because they may have similar staffing, so you may see schools within a district that all have relatively similar teacher/people ratios, and what is driving the differences is largely the teacher salaries.

Mr. GROTHMAN. Would it not sometimes be inadvertent? I can imagine the districts I have, usually the longer you teach, the higher your salary goes, so just by chance one district may have teachers averaging \$60,000 a year and the other \$45,000, and it really does not have anything to do with quality. Is that true?

Ms. GORDON. Yes, that is what is driving the difference, pay scale.

Mr. GROTHMAN. Seems to be a lot of paperwork, too. I would be surprised if districts that I am aware of even know if there is a difference in costs from school to school. I do not know if they even break things down that way.

Ms. GORDON. Many districts do not have dollars at the school level.

Chairman ROKITA. The gentleman's time has expired. I thank the gentleman. Mr. Polis, you are recognized for 5 minutes.

Mr. POLIS. Thank you, Mr. Chairman. I want to thank the witnesses for being today, and Ranking Member Fudge and Chairman Rokita. Last fall, I had the opportunity to be on the conference committee to reauthorize ESEA, and when we were in our final negotiations, one theme remained consistent: ESEA is a civil rights law first and foremost; it was created with the idea that all students regardless of where they come from, their race or ethnicity, deserve a fair shot.

And the issue we are discussing today really goes to the core of ESEA's role in fulfilling that mission. And I think it is important that the discussion today is around making sure that the money provided in ESEA for the neediest schools actually gets to these schools.

I briefly wanted to address the quote that Chairman Rokita put on the wall regarding a congressional prohibition around a specific methodology. Now, you know, I am not an attorney but the simple read of the congressional intent there is a specific methodology is prohibited, not several particular approaches that are dictated, not several specific or parameters.

If Congress had not wanted the department to give several possible approaches, the prohibition would have been against guidelines at all being issued, against several different approaches being outlined.

But the particular bar is a specific methodology, and of course, there is not a specific methodology in the department's proposed regs. There are in fact several very contrary to the word "a" proposed approaches.

I also wanted to follow up on Mr. Thompson's question to Dr. Canavero. I join Mr. Thompson in being a big fan of vocational and career programs. I wanted to ask Dr. Canavero if he is aware in Nevada of instances of Title I funds being used for some of the things Mr. Thompson mentioned, like for instance, the physical equipment for welding programs or shop programs.

Mr. CANAVERO. Thank you, Representative Polis. I am not.

Mr. POLIS. Reclaiming my time, the point being made is that would be an unusual, perhaps not explicitly prohibited use of funds, but in general, to the extent Title I funds are used for equipment, it is equipment for Title I programs, it would not be used for—really ever—it would be very difficult to use for welding programs—oh, I see Mr. Thompson has left— or for other types of programs.

The point being that of course we recognize the need for the physical investment in vocational and career education programs. I would also point out that in many cases this is done in partnership with those who already have that equipment. That is kind of the new way of doing that, community colleges and others that have that equipment.

It is rare, not unheard of, for school districts to have to purchase this equipment themselves these days, but of course, it would be even rarer still for any Title I funds to be used for that, almost impossible under previous guidelines and current guidelines. I did want to point that out.

I wanted to go to Mr. Sargrad for a question. In your testimony you mentioned that 90 percent of school districts already meet the requirements under the proposed supplement not supplant. Now, we have heard various instances of doom and gloom about the proposed regulations.

For clarity, can you again explain how most school districts already comply with these proposed standards, and realistically, what do you think the effect of these regulations would be?

Mr. SARGRAD. Thank you, Representative Polis. So the department estimates, as you mentioned, that approximately 90 percent of districts have no Title I schools that are receiving less than their non-Title I counterparts. And that means that in a small subset of districts and with a certain number of schools, this is a significant problem, and as I mentioned, the department also estimates that these differences are about \$440,000 per school.

But for the remainder of districts, they are already spending enough money in their non-Title I schools to meet this requirement, and combined with the flexibility that the regulation provides on a 5 percent buffer year to year on the spending, combined with flexibility for students with disabilities and English learners.

Mr. POLIS. Mr. Owens, it is my understanding your organization, and I do not know if you personally as well, but along with many State superintendent associations, are supportive of the department's 2015 guidance on schoolwide programs, and that guidance actually provides the same two examples the department has included in its regulation.

The proposal also includes a State determined option for compliance, very similar to those 2015 guidance, and I was wondering why your organization or perhaps you can address it on a personal level as well, why you are supportive of those options in the 2015

guidance but not those same examples and options in the current proposed regulation.

Mr. OWENS. Thank you, Representative Polis. As I understand the 2015 guidance and regulations, it provides much more flexibility to my members to assess the needs of their students and deploy resources accordingly, which is not as - the flexibility is not as visible to us in the proposal today from the department in terms of the methodologies that would be prescribed for districts that result in uniform spending per student.

Mr. POLIS. Thank you.

Chairman ROKITA. Thank you. The gentleman's time has expired. I will now recognize Mr. Bishop for 5 minutes.

Mr. BISHOP. Thank you, Chairman Rokita. Thank you for this informative hearing today, and thank you to the panel for your testimony and your time, really appreciated it.

I know a number of the members of this committee were State legislators, I have heard them indicate that, and I think we have all seen the heavy hand of the Federal Government as a State legislator. Many times these programs were forced down upon State legislatures, they call them "incentives," but they are in the form of a mandate, many case, an unfunded mandate.

As a State legislator, I knew how very damaging they were to what we were trying to do on behalf of our local school districts. I am also a parent, so I have three children in public schools today, and I am very concerned about the state of our public schools, and that is why I was very proud of what we did with the ESEA, which was a direct attempt at making sure we ended these failed top down policies, and we reduced the Federal rule, and really restored local control to K-12 education, which was a bipartisan effort.

It was the intent of Congress. I thought the law was clear and unambiguous. We made every effort to try to drill down and polish to ensure that there would be no questions as to interpretation, but of course, now we are seeing that.

We had the director in several times expressing our concerns about implementation. And now we are faced with an implementation question. I am sure this is going to continue as time goes on.

I have a question and I guess I do not know who to ask it to, and please feel free to weigh in if you would like to, but I would like to begin with Dr. Gordon, because I noticed in your bio you focus on fiscal federalism and American educational policy and the current historical Federal role in elementary and secondary education, which I think is specific to this question.

The department has estimated that all but about 1,500 school districts around the country will be in compliance with what they are calling the "special rule." In your testimony, you questioned this data. How valid do you think the estimate is?

Ms. GORDON. To clarify, that estimate comes from the 2013 civil rights data collection, which is now publicly available for anyone who would like to try to replicate, and I have spent some time with preliminary estimates with these data.

I do not question there would be about 1,500 districts who, if you believed those numbers, which is an issue because many school districts in that data collection are being asked to report spending at the school level in dollars, and they do not have the data infra-

structure to generate those numbers, so they are reporting something, something that is measured with error, but if you take those data as a starting point, I think that is probably correct that you would find about 1,500 districts that are not in compliance.

What I disagree with, there are not 90 percent of districts who are in compliance, rather the majority of that 90 percent, the rule does not apply to them because they are so small they do not have one Title I school and one non-Title I school within the same grade span, so it is not that most districts meet this rule. Rather, the rule does not apply to many districts.

Mr. BISHOP. Okay. But we agree that 1,500 is a good number in terms of those that are not in compliance?

Ms. GORDON. Ballpark.

Mr. BISHOP. Okay. The department also estimates that this would cost about \$800 million and \$2.2 billion for those 1,500 districts to come into compliance with the special rule. Again, how valid is that number?

Ms. GORDON. I have not tried to replicate that number, but just to give some background on what I think is the methodology because they have not shared details of how they calculate that number, which you cannot replicate without knowing some of the assumptions, I think the lower number comes from assuming that you are just moving the money from non-Title I schools into non-Title I schools, and the higher number comes from assuming you are going to keep all Title I schools the same and level up.

Mr. BISHOP. In any case, the compliance number is astronomical, especially for a local school district who is already tied up and having difficulty making ends meet to begin with.

Ms. GORDON. I think what should receive more attention, actually in the proposed rule they discuss how there are 500 districts who are going to have greater costs, and it would be interesting to see their data on what the costs are going to be for those districts.

Mr. BISHOP. It is unfortunate because communities will be forced to relocate teachers, raise taxes or both, and America's poorest neighborhoods will probably be hit the hardest.

Thank you. My time is up. I yield back.

Chairman ROKITA. I thank the gentleman for yielding. Ms. Adams, you are recognized for 5 minutes.

Ms. ADAMS. Thank you, Mr. Chair, Ranking Member Fudge, and thank you to the panelists for your testimony.

Mr. Sargrad, what in your estimation would happen without an enforceable standard for compliance with the supplement not supplement requirement that can be used by State auditors, and what happens if it is left completely open for interpretation?

Mr. SARGRAD. Thank you, Representative Adams. I think that is a great question. There are two things that I think could happen. One is that districts will continue to be confused by this requirement just as they have been in the past. I think you have heard from a number of us today that the old supplement not supplant requirement really did not serve kids well because districts were so concerned about these audit requirements and there was not clear guidance and there were not clear regulations on this.

The second thing is that you could continue to see these inequities persist at the district level. As we have mentioned, this rep-

resents 1,500 districts, but there are a lot of students that there in those districts and a lot of students that this money could do real good for.

And if the department cannot enforce this requirement and districts continue to perpetuate those inequities, those students are going to lose.

Ms. ADAMS. Thank you. Dr. Canavero, the proposed rule simply asks each LEA to come up with an allocation formula for State and local funds, to apply that formula, and then to prove that the Title I schools within the district receive the funding they deserve under the LEA's own allocation formula.

Can you help me understand why this is bad or an inequitable policy?

Mr. CANAVERO. Certainly, thank you, Representative Adams. So number one, I do not think it is disputable, and I would suggest that I think Nevada has taken great strides to ensure that schools receive additional funds, in particular, schools serving communities in poverty, English language learners, insomuch as the State has passed additional funding for gifted and talented pupils, as well as special education, or students in special education.

The challenge we have with the regulation or the issue I have with the regulation is trying to reconcile what it is suggesting and offering versus the path that the State is pursuing and the course that we have charted.

The issues related to what I find to be ambiguous language about "almost all" and others related to the special rule or the exemptions that may or may not apply.

In particular cases for me, when we look at funding English learners in non-Title I settings, which is as we work our way towards distributing the weight across more and more students as we invest as a State, what we find is that the English learners may be in concentrations of 30 percent at a non-Title I school, and it is unclear whether or not the additional expenses at that school within a district would have to come down if in fact the Title I school that does not receive the EL funding is not in locked step with that EL school.

So just recognizing the auditing of this process as was mentioned earlier, I am having a tough time figuring out how I would advise my districts related to auditable standard, related to the language that, for example, high proportion or most, I believe, versus the auditable standard that would be applied to the language in the law, which is very similar to the auditable standard that was created under the schoolwide allocation for Title I schools, which is something districts are comfortable with, States know. That seems a little bit more predictable than the potential auditable standard that is created or not created under the regulations.

Ms. ADAMS. Okay. Thank you. Mr. Owens, you argued that allowing district administrators to override school level decisions to ensure there is a balance. However, superintendents are tasked with overriding school level decisions all the time in order to balance competing demands and make sure that all children are served.

So are there times when superintendent decisions should override school level decisionmaking?

Mr. OWENS. Thank you, Representative Adams. Certainly, the superintendent is the last voice for children at a school district, and if they ever exercise their authority to override a school level decision, it should be done based on the best interest of an individual child, not in an effort to be in compliance with a Federal regulation.

Ms. ADAMS. Alright. Thank you very much. I yield back.

Chairman ROKITA. I thank the gentlelady. Ms. Davis, you are recognized for 5 minutes.

Mrs. DAVIS. Thank you, Mr. Chairman and ranking chairman as well. I am very sorry that I missed all of your discussion before this. But as a former school board member for nine years, I am just trying to understand. Certainly, the situation in San Diego, California is different, for example, then in Oklahoma.

But it seems that you are asking for a very clear rule on this, and at the same time, asking for perhaps no rule, and I wonder if you could clarify for me what you feel is absolutely best.

One of the things I know is that nothing makes people crazier, of course, when they are trying to follow the rules and having difficulty with it, and on the other hand you have just from a governance point of view the problem of a school board member who is trying to balance out very, very close numbers perhaps, percentages of young people in one group or another who need to be served, and it is minuscule in many cases, and yet they are having to decide and direct resources.

How would you do that? Because we are struggling with this, obviously. What needs to be done? How clear or on the other hand, how muddled? Which makes more sense?

Mr. OWENS. Thank you, Representative Davis. In my testimony, what we suggest from Oklahoma is that the U.S. Department of Education, if the numbers are accurate, and I do not have the capacity to evaluate whether it is 10 percent of schools that would be out of compliance with the special rule or 20 percent, I do not know what that number is, but if the number is at that 10 percent mark, would it not make more sense for the Department of Education to provide individualized special treatment for districts that have been identified as not investing an appropriate amount of State and local funds in their Title I schools because they received Title I funds, rather than passing a sweeping regulation that impacts so many districts that either do not fall under the rule but nevertheless have to do the paperwork associated with it to show they are in compliance.

I am king of a simple think, I like analogies, so for me, it is as if we are going to buy a new car because we have a flat tire, when we could just replace the tire.

So if we know there is just a small percentage that are out of compliance, we should direct our energy and our effort there.

Mrs. DAVIS. Mr. Sargrad, could you respond as well? Because I think the issue that we are all grappling with is how do you limit the inequities that children are going to experience because funds are either going towards substitute teachers or obviously we have teachers who are newer to teaching, and those schools may not be getting the funds. Where do you fall on that?

Mr. SARGRAD. I think, just to do a different analogy, maybe I would say what we want to do is to make sure just like the FDA is responsible for ensuring that all food is safe, we want to make sure the Federal Government has the responsibility for making sure all districts are spending the amount of money in their poor schools that those students deserve.

We do not tell the FDA to not monitor food safety across the country because it might only be in a handful of places there is a problem.

I think it is again a critical Federal role to make sure that all districts are meeting the responsibility that the law lays out, to say they are using the Federal funds to supplement and not supplant the local and State dollars.

Mrs. DAVIS. Anybody else want to comment, especially in terms of fairness issues? What is fair?

Ms. GORDON. Thank you. Thank you for your question, Representative Davis. I think this is exactly the crux of the matter is, is this rule, which is in the statute itself, so simple that people do not realize it is a rule.

And so rather than showing – and if you go back to the July 2015 guidance that the department issued when the language now in the law applied under No Child Left Behind schoolwide programs – there was no kind of going back and checking the numbers in individual schools, it was about the methodology.

So this was something Mr. Sargrad described as funds based, but it was really about what is the methodology that you are using to distribute the funds. It could be you have staffing methodology and then you pay the actual salaries of the teachers who wind up in the different schools.

So I would just refer you to that guidance to see how even though it is one plain language sentence in the statute, it is an auditable standard rather than the rule.

Chairman ROKITA. The gentlelady's time has expired. I thank the gentlelady. Ms. Fudge, you are recognized for 5 minutes.

Ms. FUDGE. Thank you, Mr. Chairman. I sit here and listen to them talk about congressional intent. I thought the intent of the law was equity, that the intent of the law is to at least give every child a fighting chance. The intent of the law was to make sure every child has an equal opportunity to succeed. That is the intent, so I don't know what – if maybe we were in different meetings, but that is my recollection.

Especially as we look at schools becoming more and more segregated across this country, and as we look at the fact that data continues to show that poor kids are getting shortchanged, so I do not know what we are fighting about if the real intent of the law is equity. I just do not understand for the life of me why if we give poor children their fair share, it is a problem.

Mr. Sargrad, and I am going to use the words of Mr. Owens, he indicates that if we give poor children their fair share, the sky is going to fall, but his words, and I quote, "It will destroy the stability within classrooms and amongst schools, and likely lead to the elimination of programs and initiatives that increase student and/or parent choice." Do you agree with that?

Mr. SARGRAD. Thank you, Ranking Member Fudge. I do not agree. I think that these special programs and these additional services that Mr. Owens and Dr. Canavero have talked about, career and technical education, arts and physical education, those are key and they are just as key for low-income students as they are for high-income students.

So I see no reason why non-Title I schools should have those opportunities and Title I schools should not.

Ms. FUDGE. Let me further ask this question. For what reason would schools not want to give us this information?

Mr. SARGRAD. I cannot see a reason why they would not want to. I think the information is certainly complicated, and I think Congress was right to include new transparency requirements in the law around this kind of spending.

And so, with those requirements, school districts are going to need to be more transparent around spending, and that will help them comply with this new supplement not supplant requirement.

Ms. FUDGE. What do you believe the intent of the law was, Mr. Sargrad?

Mr. SARGRAD. I think the intent is very clear, to protect equity and improve achievement for all students, and particularly, disadvantaged students.

Ms. FUDGE. Okay. Dr. Canavero and Mr. Owens, you have both testified that the new standard for compliance in the proposed rule is unacceptable. I have not heard either of you suggest what an acceptable standard would be. I can assure you it was not Congress' intent to allow compliance with this important requirement to be subject to the whims of more than 15,000 school districts.

So what in your judgment is a satisfactory standard? Dr. Canavero and then Mr. Owens.

Mr. CANAVERO. Thank you, Ranking Member Fudge. You know, I go back to some comments that Mr. Owens made in relation to the issue and the problem statement that is being attempted to solve here through this policy. I do not believe anybody or at least I do not disagree that additional funding is necessary and I think the track record in our State demonstrates that is something we support, and that all students absolutely fundamentally deserve an opportunity to succeed and claim those opportunities in the future.

What would be a reasonable standard, I think, is what you are asking.

Ms. FUDGE. That is the question.

Mr. CANAVERO. It is related to, I think, honing in, utilizing the data that are available, and I tried to find the dataset and I could not, I would love to find it if someone can send it to me, utilizing the dataset that is available to attack the problem.

If there is a problem of inequitable spending in 10 percent of the school districts, utilizing the very policy and enforcement action available to U.S. Ed to get after that—

Ms. FUDGE. What is the answer? You are reciting the problem. What is the answer? Mr. Owens, do you have an answer?

Mr. OWENS. Thank you, Ranking Member Fudge. I believe that is the answer, if the department—

Ms. FUDGE. And you would do it how? Tell me how you would do that if that is the answer.

Mr. OWENS. You could use the language from the statute itself where the LEA has to demonstrate to the State Department of Education that each Title I school received at least as much State and local funds as it would have otherwise received absent its status as Title I.

Ms. FUDGE. Is that not the same thing the rule says?

Mr. OWENS. Well, the rule has a heavy focus on the spending within Title I schools and non-Title I schools as adjusted for personnel or per pupil, and without auditable standards around what that looks like, there is confusion at the district level as to how the State will interpret. There is confusion at the State level as to how the Federal department will interpret.

Ms. FUDGE. Thank you, Mr. Owens, but what I am hearing you saying is what the rule is saying. Thank you so much all of you for your testimony. Mr. Chairman, I yield back.

Chairman ROKITA. I thank the gentlelady. The gentlelady is recognized for her closing.

Ms. FUDGE. Thank you, Mr. Chairman. I thank you for this hearing today. I thank you all for being here. I would like, Mr. Chairman, to submit for the record a letter from a coalition of 31 civil rights education and child welfare organizations in support of the department's original proposed supplement not supplant regulation.

Chairman ROKITA. Without objection.

Ms. FUDGE. Thank you, Mr. Chairman. With that, I would just suggest this. If in fact the intent is what we have all agreed it is, just as we have talked at least from my perspective, then I would hope that we would not continue to shortchange students because we do not want to fill out a piece of paper. I yield back, Mr. Chairman.

Chairman ROKITA. I thank the gentlelady. Let me again thank the witnesses for their testimony. From my perspective, it is pretty clear again what Congress' intent was. We had these discussions. We agreed on a solution. Some amendments were filed. Some were successful, some were not.

What is not at issue here is congressional intent and what the law is, regardless of any one person's or one organization's or 31 organizations' opinion.

We are either going to live in a country where we all are equal under the law, and the law is followed, or we are going to live in a country that is dictated by bureaucrats, which one is it going to be? We are all after the same goal, and that is equity and that is improving the lives of our best and most precious asset, our children. No one disputes that. No one is not trying to get that done.

And again, we agreed on what the new approach should be, and it is nothing at all what the Department of Education is now trying to propose and the authority it is trying to usurp.

I want to go back, again, to this issue of congressional intent. We understand that executive agencies are responsible for implementing the laws, not making them. They are not allowed to take the plain language of statutes and rewrite it.

And I want to direct everyone in the room back to the screen. On the screen, this came up in my questioning as well, it is the 2012 recommendation from the Center for American Progress and the

American Enterprise Institute. Reading the last half, it says, quote, "If districts can document that the manner in which they allocate State and local resources to schools is Title I neutral, they should be clear of suspicion around supplanting non-Federal funds with Title I dollars." Right?

A left leaning group and a right leaning group came together and agreed that this makes sense, why? For the benefit of our children.

The next slide on the screen is the statutory language from the Every Student Succeeds Act that Congress again adopted and the President signed in response to this recommendation. It says, quote, "To demonstrate compliance with paragraph one, a local educational agency shall demonstrate that the methodology used to allocate State and local funds to each school receiving assistance under this part ensures that such school receives all of the State and local funds it would otherwise receive if it were not receiving assistance," "under this part" meaning Title I, close quote.

And finally, the next slide is the Senate committee report produced by Ranking Member Murray and Chairman Alexander. Most of us participated in that conference committee. It explained the congressional intent. It says, quote "Specifically, the bill allows States and LEAs to comply with SNS for Title I Part A funds if they can document that the manner in which they allocate State and local resources to schools is Title I neutral, or that the methodology does not account for the Title I funds that schools will receive," close quote.

So the statutory language says that the school districts will be considered in compliance with supplement not supplant if they can demonstrate that the method, to Dr. Gordon's point, that the method they use to allocate funds does not consider whether or not a school receives Title I funds. The statute very specifically does not require any particular funding outcome, Mr. Sargrad. That is the law. That is what we intended.

Funding outcomes are not considered here. and there is nothing in the statute or the history of this provision to support what the department is proposing.

Again, I want to thank the witnesses for their testimony. When we negotiated this final legislative language and the President signed it, I thought we were out to a good start. I thought we were really breaking ground. I still think that today. I am optimistic. The leadership here, by all four of you, is emblematic of that. And you are going to be on the front lines of this.

I do not believe that Washington has better answers than you do, especially you, Dr. Canavero, and you, Mr. Owens. You have the right intent, you have the right heart and the right brains for this kind of work, and the colleagues that you represent. And that is what we intended in Congress, is to give you that responsibility and that authority back to protect and grow our best assets.

And that is why we are going to continue this approach, and we are going to continue in this oversight phase of ESSA to make sure that we remain a country where all of us live under law that were passed by this body and not the Executive Branch.

Thank you very much for your time today. This hearing is adjourned, seeing no other business before it.

[Whereupon, at 11:43 a.m., the subcommittee was adjourned.]

[Additional submissions by Ms. Fudge follows:]

**The Leadership Conference
on Civil and Human Rights**

1629 K Street, NW 202.466.3311 voice
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20006



April 28, 2016

The Honorable John King
Secretary
U.S. Department of Education
400 Maryland Ave., SW
Washington, DC 20202

Dear Secretary King,

On behalf of The Leadership Conference on Civil and Human Rights and the 30 undersigned organizations, we urge the Department of Education (the "Department") to issue strong regulations clarifying the means by which school districts must demonstrate their compliance with the "supplement, not supplant" requirement in Title I of the Every Student Succeeds Act (ESSA),¹ the most recent reauthorization of the Elementary and Secondary Education Act (ESEA) of 1965. This requirement, present in the law since 1970, ensures that districts serving high percentages of low-income students are able to provide supplemental programs and services to help mitigate the effects of concentrated poverty and truly help all students succeed with the aid of federal funds. Without robust clarity in regulations for the oversight of this provision of the law, the integrity of federal Title I dollars will be undermined and low-income students will be deprived of the supports and services they need and deserve. We believe that the Department has both the authority and the responsibility to ensure that this provision is properly implemented and we urge regulatory language that will help states to effectuate the purpose of this provision of the law.

Historically, Title I funds have been awarded to school districts solely on the condition that they be used to provide *additional* supports and services for educationally disadvantaged students. That purpose was clarified in a statutory requirement added after 1965, in direct response to reports of the misuse of funds by school districts in the law's first years.² For example, in the 1968-1969 school year the Sumter County #2 school district in South Carolina, used Title I funds to provide libraries for Black schools which were comparable to those provided in White schools. Where White students benefitted from state and local funds, Black students benefitted only from federal funds. In fact, South Carolina's ESEA director at the time admitted that much of the state's Title I money was spent to patch funding inequities to make schools for Black children comparable to those for White schools. Similarly in Mississippi, the Title I allotment was used to build and equip cafeterias and libraries, to hire teachers, and to provide instructional materials and books to Black students that had long been available to White students.

¹ Section 1118(b)(1) requires that, "A State educational agency or local educational agency shall use Federal funds received under this part only to supplement the funds that would, in the absence of such Federal funds, be made available from State and local sources for the education of students participating in programs assisted under this part, and not to supplant such funds."

² *Title I of ESEA: Is it Helping Poor Children?* 1969. Washington Research Project and NAACP Legal Defense and Educational Fund, Inc., available at: <http://eric.ed.gov/?q=ED036600&id=ED036600>.

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While the recently-enacted ESSA does amend the provision by prohibiting the use of the previous “individual services” compliance test, it does continue to insist that federal funds be supplemental. We urge the Department to measure compliance by examining actual school level expenditures, which builds upon the law’s new reporting requirements.³ In order for federal funds to be considered supplemental, each Title I school must receive from state and local sources at least as much per-pupil funding as the average of non-Title I schools in the district. Unless Title I schools are receiving an equitable base of funds from non-federal sources to ensure that the federal funds are truly supplemental, then Title I funds are being used to supplant by filling in gaps of funds the schools should be receiving. This is a violation of the law. A comparison of spending between each Title I and the average of non-Title I schools allows for considerable variability among both Title I and non-Title I schools in state and local expenditures, therefore not running afoul of the law’s prohibition against requiring the equalization of spending.⁴

Compliance with an “actual expenditures test” also recognizes the reality that equitable means fair, not equal—underscoring the law’s aim to ensure that students impacted by concentrated poverty have the unique supports and services that will address their needs. This also preserves flexibility for districts to use weighted student funding, formulas for staffing and materials, or any other methodology for allocating state and local funds to schools. Although there has been some confusion on this point, the law’s prohibition on requiring a methodology applies to the method by which state and local funds are allocated, not the method by which districts demonstrate compliance.⁵

During the negotiated rulemaking process, concerns were raised about the potential “disruption” that compliance with this provision may cause. While we appreciate that administrative challenges may arise in the implementation process, we know that **the process of moving from inequity to equity or from injustice to justice has never been without disruption.** While we recognize the need to make reasonable accommodations for changes in policy, the federal government must no longer be expected to subsidize the inequitable funding of public schools serving high numbers of low-income students who are disproportionately likely to be students of color and English Learners. The integrity of Title I funds must be preserved to fully realize the aim of ensuring equity and equal access to quality educational opportunities.

We appreciate your consideration of the aforementioned concerns as the Department moves towards finalizing the regulations for this elemental provision of ESEA. Should you have any questions about the issues raised herein, please contact Liz King, Leadership Conference Director of Education Policy, at king@civilrights.org or Janel George, NAACP Legal Defense and Educational Fund, Inc., Senior Education Policy Counsel, at jgeorge@naacpldf.org.

Sincerely,

³ Districts should demonstrate that their school-by-school actual expenditures as reported under section 1111(h)(2)(x) show that each Title I school receives at least as much state and local funding per-pupil as the average of non-Title I schools.

⁴ Section 1605. Rule of Construction on Equalized Spending. Nothing in this title shall be construed to mandate equalized spending per pupil for a State, local educational agency, or school.

⁵ Section 1118(b)(4) PROHIBITION.—Nothing in this section shall be construed to authorize or permit the Secretary to prescribe the specific methodology a local educational agency uses to allocate State and local funds to each school receiving assistance under this part.



The Leadership Conference on Civil and Human Rights
 NAACP Legal Defense and Educational Fund, Inc.
 Alliance for Excellent Education
 American Civil Liberties Union
 American-Arab Anti-Discrimination Committee
 American Association of University Women (AAUW)
 Association of University Centers on Disabilities
 Judge David L. Bazelon Center for Mental Health Law
 Children's Defense Fund
 Council of Parent Attorneys and Advocates
 Democrats for Education Reform
 Disability Rights Education & Defense Fund
 Easter Seals
 The Education Trust
 Lawyers' Committee for Civil Rights Under Law
 League of United Latin American Citizens
 MALDEF
 NAACP
 National Association of Councils on Developmental Disabilities
 National Council of La Raza
 National Disability Rights Network
 National Down Syndrome Congress
 National Indian Education Association
 National Urban League
 National Women's Law Center
 New Leaders
 PolicyLink
 Southeast Asia Resource Action Center
 Teach Plus
 TNTP (The New Teacher Project)
 UNCF



Opportunities for Teachers,
Results for Urban Students

May 10, 2016

The Honorable John B. King, Jr.
Secretary of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary King:

As teachers and principals in Title I schools, we are writing to urge you to ensure that one of the most important provisions of the Every Student Succeeds Act – the provision that ensures that federal Title I funds are supplemental to state and local school funding – is fully and fairly enforced by states.

This provision goes to the heart of this civil rights law because it is intended to ensure that federal resources are spent to provide the additional educational resources that students need to succeed. While leaders in Congress agree that ensuring equity for all students is a core component of the new law, the steps to honor this intent and carry it out are complex, controversial, and could have unintended consequences. Making smart, fair choices as the law is implemented will take concerted effort by everyone involved.

The purpose of Title I is to “provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.” As teachers and principals in Title I schools who are working every day to close these achievement gaps, we see first-hand the importance to our students of the critical services and resources made available through supplemental Title I funding.

If this important ESSA provision is not properly enforced, we are concerned that some states could misunderstand the law's intent and use Title I for other purposes, including using it to replace state and local funding. This would mean a net loss of resources for schools that are already being shortchanged. Data from a recent Teach Plus Flash Poll found that nearly three quarters of the 1,000+ teachers surveyed said their Title I school does not currently receive sufficient funds to meet their students’ learning needs.

On behalf of our students, we urge the Department of Education to issue regulatory language that honors the purpose of this provision and the intent of the law. Thank you.

Sincerely,

Rebecca Belleville, Baltimore City Public Schools, MD
Jessica Ellis, Prince George's County Public Schools, MD
Rachel Man, Prince George's County Public Schools, MD
Raquel Maya, District of Columbia Public Schools, DC

Ronique McDaniel, Prince George's County Public Schools, MD
Mbulwa Musyoki, Prince George's County Public Schools, MD
Ashley Smith, Baltimore City Public Schools, MD
Sheena Washington, Prince George's County Public Schools, MD

Jennifer Acheson, Indianapolis Public Schools, IN
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 Jacqueline Adams, Shelby County, TN
 Joni Adams, Chicago Public Schools, IL
 Attah Adjei-Boateng, Boston Public Schools, MA
 Tova Adler, LAUSD, CA
 Diane Adomian, Los Angeles Unified School District, CA
 Irma Aguirre, LAUSD, CA
 Patrick Albano, The Soulsville Charter School, TN
 Jacqueline Aldridge, MSD of Wayne Township, IN
 Belinda Alducin, Chicago Public Schools, IL
 Jonathan Alfuth, Shelby County Schools, TN
 Lirazol Alie, Montachusett Regional School District, MA
 Daniel Allen, CSUSA, IN
 Steven Almazan, KIPP LA Schools, CA
 Margaret Amarante, KIPP Indy Public Schools, IN
 Pamela Amaya, LAUSD, CA
 Pat Anderson, LAUSD, CA
 Whitney Anderson, District of Columbia Public Schools, DC
 Mario Andrade, LAUSD, CA
 Sabrina Anfossi Kareem, Chicago Public Schools, IL
 Brent Angelo, Boston Public Schools, MA
 Rhonda Anthony, Shelby County Schools, TN
 Timothy Appel, Boston Public Schools, MA
 Laura Arce-Ferri, Providence Schools, RI
 Roxanne Archibald, Chelsea Public Schools, MA
 Marica Aretz, Adams 12, CO
 Patricia Arevalo, Chelsea Public Schools, MA
 Luisana Argueta, Chicago Public Schools, IL
 Pearl Arredondo, Los Angeles Unified School District, CA
 Valentina Atanassova, Quincy Public Schools, MA
 Danielle Aucoin, Boston Public Schools, MA
 Alecia Augspurg, Chelsea, MA Public Schools, MA
 Concetta Avellino, Boston Public Schools, MA
 Erika Avendalto Shorey, Chelsea Public Schools, MA
 Ashley Back, MSD Pike Township, IN
 Ray Baker, Chicago Public Schools, IL
 Caleb Balderston, Academy of the Pacific Rim, MA
 Emily Banta, Lawrence Family Development Charter, MA
 Paula Barajas, Chicago Public Schools, IL
 Shawnta S. Barnes, Indianapolis Public Schools, IN
 Anna Bartolini, Amherst Public Schools, MA
 Ebony Baylor, District of Columbia Public Schools, DC
 Regina Beach, Noble Network of Charter Schools, IL
 Linda Beaudry, Quaboag Regional School District, MA
 Kristan Beck, Chicago Public Schools, IL
 Katya Beckett, Montgomery County Public Schools, MD
 Denise Beckom, Chicago Public Schools, IL
 Teryn Bench, Rainier Prep Charter School, WA
 Brigid Bennett, Amandia Charter School, IL
 Clare Berke, Washington, District of Columbia Public Schools, DC
 Emily Berman, Blackstone Academy Charter School, RI
 Justine Bieniek, CPS Uno Academy Charter Network, IL
 Lindsey Bird, Modesto City Schools, CA
 Lisa Blackwell, Los Angeles Unified School District, CA
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 Meg Bounds, Shelby County School, TN
 Patricia Bourger, Blackstone-Millville Regional SD, MA
 Sonya Boyce, Shelby County Schools, TN
 Troy Bradbury, P.G. County Schools, MD
 Ashley Brainard, Kingston Massachusetts, MA
 Julia Brasser, Boston, MA
 Ellen Bratcher, Shelby County, TN
 Alexis Bright, Davidson County, TN
 August Brill, Chicago Public Schools, IL
 Lauren Britt, Adams 12 Five Star Schools, CO
 LaJuana Broden, Shelby County Schools, TN
 Sean Brooks, Boston Public Schools, MA
 Brianne Brown, Boston Public Schools, MA
 Lisa Brown, District of Columbia Public Schools, DC
 Danielle Brown, Fort Huachuca Accommodation School District, AZ
 Shannon Brown, CSUSA-Emmerich Manual High School, IN
 Kristina Brubaker, Los Angeles Unified School District, CA
 Milton Bryant II, District of Columbia Public Schools, DC
 Lorelei Buen, Chicago Public Schools, IL
 Maria Buendia, Boston Public Schools, MA
 Juliet Buesing, Boston Public Schools, MA
 Meteka Bullard, Los Angeles Unified School District, CA
 Marily Burgos, LAUSD, CA
 Darren Burris, Boston Collegiate Charter School, MA
 Anne Busacca-Ryan, Los Angeles Unified School District, CA
 Layla Cable, Boston Public Schools, MA
 Yolanda Calderon, Aurora Public Schools, CO
 Logan Caldwell, Shelby County Schools, TN
 Jose Camacho, LAUSD, CA
 Gina Caneva, Chicago Public Schools, IL
 Ann Carberry, Baltimore City Schools, MD
 Casey Carlock, Chicago Public Schools, IL
 Raquel Carson, District of Columbia Public Schools, DC
 Kaellagh Cassidy, Noble Network of Charter Schools, IL
 Sean Cauley, District of Columbia Public Schools, DC
 Alfonso Ceciliano, Chelsea Public Schools, MA
 Isagani Celzo, LAUSD, CA
 Amanda Chaloupka, Boston, MA
 Amelia Chase, Boston Public Schools, MA
 Georgeann Chavez, Boston Public Schools, MA
 Keauna Cheers, Shelby County Schools, TN
 Deborah Cherry, Revere Public Schools, MA
 Emily Chestnut, Indianapolis Public Schools, IN
 Kyle Cheung, Achievement School District, TN
 Christine Chiu, LAUSD, CA
 Elizabeth Chrupcala, Fall River, MA
 Jacob Cipro, Boston Day and Evening Academy - BPS, MA
 Kelsey Clark, Shelby County Schools, TN
 Patricia Clark, Indianapolis Public Schools, IN
 Ellen Clayton, Freedom Prep Academy, TN
 Darcy Cohen, Fall River Public Schools, MA
 David Coleman, Los Angeles Unified School District, CA
 Katharine Colvin, Noble Network of Charter Schools, IL
 Charlotte Conley, District of Columbia Public Schools, DC
 Kerri Ann Connelly, Boston Public Schools, MA
 Darlene Conner, SCS, TN
 Camille Connick, Pembroke Public Schools, MA
 Colleen Considine, Boston Public Schools, MA
 Jessica Consoli, Revere, MA
 Cameron Cooley, Shelby County Schools, TN
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 Stephanie Cooper, Boston Public Schools, MA
 Jacquelyne Corbaci, Chelsea High School, MA
 Rebecca Cotugno, Alma del Mar Charter School, MA
 Kevin Courmoyer, Baltimore City, MD
 Marisa Crabtree, LAUSD, CA
 Yolanda Crawford, Shelby County, TN
 Karen Cross, Boston Public Schools, MA
 Austin Crowder, Shelby County Schools, TN
 Sandra Curry, Perspective Charter, IL
 Kathryn Curtin, Noble Network of Charter Schools, IL

Betty Curtis, Shelby County Schools, TN
 Adeline Dajuste, Boston, MA
 Stephanie Darling, LAUSD, CA
 Bridgette Davis, Noble Network of Charter Schools, IL
 Cathy Davis, Shelby County School District, TN
 Miguel Davis, Chicago Public Schools, IL
 Terrence Davis, Noble Network, IL
 Roxanne De Luca, CPS, IL
 Kaylee DeGrace, Brockton Public Schools, MA
 Ester Delafuente, LAUSD, CA
 Sarah Dent, Chelsea Public Schools, MA
 Sandra DeSimone, LAUSD, CA
 Gina Desir, Boston, MA
 Sarah DeSmet, LAUSD, CA
 Christina Diaz, Los Angeles School District, CA
 Margarita DiFraia, LAUSF, CA
 Thach Do, Campbell Union High School District, CA
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 Valerie Eisenson, Chelsea Public Schools, MA
 Jessica Ekhomu, Boston Public Schools, MA
 Chinedu Ekwonye, LAUSD, CA
 Maria Elizondo, Los Angeles Unified School District, CA
 Noel Emilius, District of Columbia Public Schools, DC
 Robert English, Chelsea Public Schools, MA
 Stephany Escalante Galindo, Los Angeles, CA
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 Sharae Felder, Baltimore City Public Schools, MD
 Katherine Felter, District of Columbia Public Schools, DC
 Rhonda Ferguson, District of Columbia Public Schools, DC
 Marta Fernandes, Boston Public Schools, MA
 Suzanne Ferrari, Weymouth, MA
 Krista Fincke, Excel Academy Charter School, MA
 Julia Finkelstein, Boston Public Schools, MA
 Erin Fitzgerald-Haddad, Los Angeles Unified, CA
 Meghan Follansbee, Suffock, MA
 Minda Folloso-Edmiston, LAUSD, CA
 LaShunda Ford, ASD, TN
 James Foster, MCS, IN
 Tracy Fox, Shelby County, TN
 Gisele Francioli, Chelsea, MA
 Patricia Freckelton, Chicago Public Schools, IL
 Carly Fricano, Shelby County Schools, TN
 Naomi Fried-Kokason, LAUSD, CA
 Cecil Frison, SCS, TN
 Albert Fuentes, Los Angeles Unified School District, CA
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 Andrew Gall, EL Haynes PCS, DC
 Ayanna Gallant, Capital City PCS, DC
 Hiawatha Garrett, Vigo County Schools, IN
 Tars Garrett, Achievement Schools, TN
 Melissa Garvey, Eagle County Schools, CO
 Shaundra Gatewood, Shelby County Schools, TN
 Celestine Gatley, Shelby County Schools, TN
 Elizabeth Genovese, Chelsea, MA
 Janee Gerard, Green Dot Public Schools, CA
 Lynn Gerbec, Chicago Public Schools, IL
 Denise Gill, South Pasadena Unified, CA
 Faith Glasford, District of Columbia Public Schools, DC
 Jennifer Glynn, Match Education, MA
 Clare Goetzman, Tindley Accelerated Schools, IN
 Julie Goldanloo, Jeffco, CO
 Elizabeth Gonsalves, Abington, MA
 Connie Gonzalez, LAUSD, CA
 Melissa Grant, District of Columbia Public Schools, DC
 Anita Greasor, Vigo County School Corporation, IN
 Sarena Griffin, Chicago Public Schools, IL
 Wayne Gruenfelder, Los Angeles Unified School District, CA
 Yolanda Guerrero, Los Angeles Unified School District, CA
 Sarah Gum, Shelby County Schools, TN
 Sunny Gupta, Boston, MA
 Deborah Gurley, Unity Point School District #140, IL
 Gloria M. Guzman, Bunker Hill Community College, MA
 Sarah Hallet, Boston, MA
 Audrey Hamdan, Chicago Public Schools, IL
 Anna Hamilton, Ward 8, DC
 Janice Hanrahan, Boston Public Schools, MA
 Nicole Hansen, Boston Public Schools, MA
 Erika Hardrick, Shelby County, TN
 Helen Harlan, Cambridge Public School, MA
 Jennifer Harned, Chicago Public Schools, IL
 Crystal Harney, IPS, IN
 Rod Harrison, Adams 12 5 Star Schools, CO
 Opal Hart, Shelby County Schools, TN
 Donna L. Hartmann, Aurora Public Schools, CO
 Erin Hashimoto-Martell, Boston Public Schools, MA
 Audry Hawkins, Shelby County Schools, TN
 Lindsay Hawkins, Eagle County School District, CO
 Amy Heimberg, Chicago Public Schools, IL
 Jillian Henrici, Boston Public Schools, MA
 Ruth Hernandez, LAUSD, CA
 Jennie Herriot-Hatfield, Oakland Unified School District, CA
 Jodie Higgs, Shelby County Schools, TN
 Michael Hill, Los Angeles Unified School District, CA
 Emilie Hill, Los Angeles Unified School District, CA
 Kim Hill, Metro Nashville Public Schools, TN
 Tammy Hilton, Sanford School Dept., ME
 Timothy Hilton, Los Angeles Unified School District, CA
 Chris Hobson, Shelby, TN
 Michael Hock, Chicago Public Schools, IL
 Zina Hodge, Charter Schools USA, FL
 Dorothy Hodges, KIPP Metro Atlanta, GA
 Carlota Holder, MSD Warren, IN
 Pamela Holguin-Brown, LAUSD, CA
 Myosha Holloway, Shelby County Schools, TN
 Angela Holt, I.P.S., IN
 Lisa Hopper, Warren Township, IN
 Heather Hotchkiss, Lee High School, FCPS, VA
 Alma Hotton, Public District PreK-8, IL
 Pamela Houghton, Los Angeles Unified School District, CA
 Sarah Houlihan, Boston Day and Evening Academy, MA
 Amy Howland, Academy of the Pacific Rim, MA
 Lauren Huanosto, Los Angeles Unified School District, CA
 Jessica Hurtley, John P Freeman K-8 Optional School, TN
 Victor Idowu, CPS, IL
 Laura Incelli, LAUSD, CA
 Amber Jackson, Prince George's County Public Schools, MD
 Jillian Jacobs, Chelsea Public Schools, MA
 Daniel Jang, Friendship Public Charter School, DC
 Maryalice Jennings, Boston, MA
 Candace Johns, Los Angeles Unified School District, CA
 Andrew Johnson, Chicago Public Schools, IL
 Brad Johnson, Noble Network of Charter Schools, IL

Neshelida Johnson, Shelby County Schools, TN
 Tanika Johnson, Shelby County Schools, TN
 Teresa Johnson Javaloyes, Boston Public Schools, MA
 Khristopher Johnson-Deloatch, Tindley Collegiate Academy, IN
 Orania Jones, Los Angeles Unified School District, CA
 Shirley Jones-Luke, Boston, MA
 Pamela Josephson, LAUSD, CA
 Fatemeh Jozani, LAUSD, CA
 Christina Jusino, Lawrence Public Schools, MA
 Susan Kacvinsky, Los Angeles Unified School District, CA
 Tiffany Kaijage, FPCS, DC
 Bruce Kameron, Boston Public Schools, MA
 Patti Kane, Boston Public Schools, MA
 Katherine Kaplan, Shelby County, TN
 Nick Kapp, LAUSD, CA
 Shelly Karren, Canyons School District, UT
 Carly Kauffman, Chicago Public Schools, IL
 Elissa Kaufman, Boston Public Schools, MA
 Sunserae Keaton, Los Angeles Unified School District, CA
 Shanie Keelean, Buffalo Public Schools, NY
 Megan Kelly, Chicago Public Schools, IL
 Joseph Kelly, Chelsea, MA
 June Kendall, UPCA, IL
 Sela Kenen, Chelsea, MA
 Linda Kenney, Marlborough, MA
 Christine Kenney, Barnstable, MA
 Patricia Kenny, Mashpee, MA
 Chris Kenny, Capital City Public Charter School, DC
 Melanie Kerr, Boston Public Schools, MA
 Natalie Khalatov-Krimnus, Revere Public Schools, MA
 Lili Khozan, LAUSD, CA
 Leslie Kilcullen, Los Angeles Unified School District, CA
 Jeewon Kim, LEARN Charter School Network, IL
 Jeffrey King, LAUSD, CA
 Emerson Kington, Boston, MA
 Kathryn Kirchner, Indianapolis Public Schools, IN
 Jean Klasovsky, Chicago Public Schools, IL
 Alexander Kmicikewycz, Chicago Public Schools, IL
 Kate Kreinbring, Chicago Public Schools, IL
 June Krinsky-Rudder, Revere Public Schools, MA
 Stephanie Kuo, Los Angeles Unified School District, CA
 Sakinah Kushmir, Cook County, IL
 Erma Kuykendall, Shelby County Schools, TN
 Colleen Labbe, Boston Public, MA
 Jennifer Langdon, Boston Public Schools, MA
 Peggy Larkin, Irvington Community Schools, IN
 Maggie Lasaga-Flister, Baltimore City, MD
 Constance Latney, District of Columbia Public Schools, DC
 Jessie Lazcano, Boston Public Schools, MA
 Patricia Leahy, Boston, MA
 Abda Lee, Boston Public Schools, MA
 Andrea Leggett, Denver Public Schools, CO
 Michelle Leip, MA
 Nathan Lewallen, Boston Public Schools, MA
 Melissa Lewis, Mapleton, CO
 Megan Lewis, Charles A. Tindley Accelerated Schools, IN
 Allison Liang, LAUSD, CA
 Michael Liang, Boston Public Schools, MA
 James Likis, Boston Public Schools, MA
 Christina Lincoln-Moore, LAUSD, CA
 Diane Lindner, Los Angeles Unified School District, CA
 Sherri Lingerfelt, Davidson County, TN
 Alfred Lloyd, Shelby County Schools, TN
 Amanda Lombarski, LAUSD, CA
 Caridad Lopez, Boston Public Schools, MA
 Susan Ludwig, Chelsea, MA
 Hilary Lustick, New York City Public Schools, NY
 Ann Lyons, Chicago Public Schools, IL
 Sherry Lyons, Everett, MA, MA
 Cori M, Boston Collegiate Charter School, MA
 Virginia Machado, Carver Public Schools, MA
 John Maddux, St. Louis Public Schools, MO
 Keith Magni, Boston Public Schools, MA
 Keita Mallett, CPS, IL
 Ariel Maloney, Cambridge Public Schools, MA
 Kathleen Mandeville, Eagle County Schools, CO
 Linda Manzo, Boston, MA
 Sarah Margeson, Seattle Public Schools, WA
 Dalia Marquez, 10, IL
 Lovelyn Marquez-Prueher, Los Angeles Unified School District, CA
 Kathleen Marquis, Boston, MA
 Solange Marsan, Boston Public Schools, MA
 Paulina Martinez, LAUSD, CA
 Elaine Mascal, Boston, MA
 Colleen Mason, Boston Public Schools, MA
 Jill Massaro, Pueblo City Schools, CO
 Jessica Matt, Boston, MA
 G. Diane Matthews-Marcelin, Los Angeles Unified, CA
 Virginia Mayes, Shelby County Schools, TN
 James McAdams, Quincy Public Schools, MA
 Ashley McCall, LEARN Charter Network, IL
 Heather McCarthy, Charter School of Applied Technologies, NY
 Chaitra McCarty, Barnstable, MA
 Yolanda McCollum, Boston Public Schools, MA
 Amanda McElrath, Shelby County Schools, TN
 Donna McInnes, Los Angeles Unified School District, CA
 Megan McKee, Chicago Public Schools, IL
 Kim McLachlan, Adams 12 Five Star Schools, CO
 Yvonne McNutt, Chicago Public Schools, IL
 Anita McQuillan, LAUSD, CA
 Michael Meadows, Prince George's County Public Schools, MD
 Margo Melson, MSD Wayne Township, IN
 Lupe Mendoza-Fernández, Los Angeles Unified School District, CA
 Julie Metcalf, Indianapolis Public Schools, IN
 Rachelle Milord, Boston Public Schools, MA
 Micah Miner, Illinois Maywood District 89, AR
 Jo Anne Mitchell, LAUSD, CA
 Daniel Mojica, Chelsea, MA
 Yvonne Mojica, LAUSD, CA
 James Moloney, Boston Public Schools, MA
 Kayon Montaque, Achievement School District, TN
 Bruno Monteiro, Boston Public School, MA
 Edgar Monterroso, LAUSD, CA
 Victoria Montes, LAUSD, CA
 Shafeza Moonab, Broward County Schools, FL
 Nicholette Moore, Chicago Public Schools, IL
 Sonya Moore, Shelby County Schools, TN
 Helda Morad, Prince George's County, MD
 Maria Moreno, LAUSD, CA
 Norma Moreno, Chicago Public Schools, IL
 Shannon Morey, Boston Public Schools, MA
 Vicki Morical, IPS, IN
 Sandra Moy, Chicago Public Schools, IL
 George Mueller, Chicago Public Schools, IL
 Sarah Mulcahy, Prince George's County Public Schools, MD
 Molly Myers, Chicago Public Schools, IL
 Sol Namkung, LAUSD, CA
 Anntriniece Napper, Ph.D., Shelby County Schools, TN
 Allean Neal, Shelby County Schools, TN
 Signe Nelson, District of Columbia Public Schools, DC
 Sherry Nelson, Chicago Public Schools, IL
 Marquitta Nesmith, MNPS, TN
 Cathy Newkirk, Shelby County School District, TN
 Hang Nguyen, Los Angeles Unified School District, CA

Steven Nguyen, Indianapolis Public Schools, IN
 Vong Nguyen, Orange Unified School District, CA
 Paige Nilson, Chicago Public Schools, IL
 Christine Nixon, Robeson County Schools, NC
 Denise Noah, LAUSD, CA
 Edythe Norgaisse, New Bedford Public Schools, MA
 Karen Normington, Fall River, MA
 Celeste Norris, Tindley Accelerated Schools, IN
 Cody Norton, District of Columbia Public Schools, DC
 Alyssa Nucaro, Shelby County Schools, TN
 Alicia Nutall, Shelby County Schools, TN
 Ukamaka Nwobi-Anagu, Los Angeles Unified, CA
 Mary O'Brien, Boston, MA
 Bebhinn O'Connell, Boston Public Schools, MA
 Katherine O'Connor, E.L. Haynes Public Charter School, DC
 Megan O'Connor, Shelby County Schools, TN
 Christina O'Leary, Chicago Public Schools, IL
 Erin Oakley, Janesville-Waldorf-Pemberton Schools, MN
 Andrea Oliver, Prince George's County Public Schools, MD
 Nora Olson, Gwinnett County Public Schools, GA
 Maren Olson, Chelsea Public Schools, MA
 Christine R Ontiveros, Alta Public Schools, CA
 Keri Orellana, Boston Public Schools, MA
 Edgar Ovando, Los Angeles Unified School District, CA
 Kimberly Owens, Shelby County, TN
 Julie Oxenhandler, Baltimore City Public Schools, MD
 Tabitha Pacheco, Utah Virtual Academy, UT
 Jacob Pactor, School Town of Speedway, IN
 Saemina Park, LAUSD, CA
 Anitra Parker, District of Columbia Public Schools, DC
 Leila Parks, Boston Public Schools, MA
 Jaime Paschall, Prince George's County, MD
 Noah Patel, Boston Public Schools, MA
 Amanda Patrick, Winthrop Public Schools, MA
 Laura Paynter, Chicago Public Schools, IL
 Wes Peacock, Chelsea Public Schools, MA
 Lisa Peck, Atlantis Charter School, Fall River, MA, MA
 Kelley Penic, District of Columbia Public Schools, DC
 Amy Penna, Chicago Public Schools, IL
 Manuel Peralta, Los Angeles unify school district, CA
 Carlisa Perdomo, Los Angeles Unified School District, CA
 April Perdomo, Shelby County Schools, TN
 Gustavo Pereira, Boston, MA
 La Meca Perkins-Knight, Indianapolis Public Schools, IN
 Meaghan Petersack, Scholar Academies, DC
 Hoang Pham, KIPP LA Schools, CA
 Michelle Phillips, Barnstable, MA
 Charnisha Phipps, Shelby County, TN
 Meredith Pica, Baltimore City Public Schools, MD
 Stephanie Pinch, District of Columbia Public Schools, DC
 Michelle Pinedo, KIPP LA Schools, CA
 Cindy Pirro Vargo, Montachusett Regional, MA
 Janet Platt, Boston Public Schools, MA
 Anka Popovich-Krstic, Chicago Public Schools, IL
 Delishia Porterfield, MNPS, TN
 Antonia Powell, IPS, IN
 Luis Pozo-Lin, District of Columbia Public Schools, DC
 Susan Pryor, Chicago Public Schools, IL
 Anthony Purkett, Chicago Public Schools, IL
 Ms. Jessica Purohit, Alexandria City Public Schools, VA
 Sandra Quintana Gonzalez, Boston, MA
 Lisa Quon, LAUSD, CA
 Emily Ramirez, LAUSD-North, CA
 Larry Rangel, LAUSD, CA
 Alexander Rasas, LAUSD, CA
 Candi Rauch, Shelby County Schools, TN
 Nancy Rayo, Nixon, IL
 Kimberly Reece, Prince George's County Public Schools, MD
 Chandra C. Reed, Chicago Public Schools, IL
 Selena Reich, Southern Worcester County, MA
 Cinthia Reilly, Orange Elementary, MA
 Bailey Reimer, CICS-Basil, IL
 Kristin Reina, Chicago Public Schools, IL
 Brianna Reyes, Chelsea, Massachusetts, MA
 Steve Reynolds, LAUSD, CA
 Marilyn Rhames, Chicago Public Schools, IL
 Yasmina Rhodes, Boston, MA
 Yasmin Rice, Somerset Prep, DC
 Constance Rihani, Chicago Public Schools, IL
 John Riley, Indianapolis Public Schools, IN
 Melissa Rios, Chicago Public Schools, IL
 Melissa E Roberts, Los Angeles Unified School District, CA
 Ethan Robertson, Freedom Preparatory Academy, TN
 Camille Robinson, District of Columbia Public Schools, DC
 Abigail Robinson, Indianapolis Public Schools, IN
 Lakishia Robinson, Ed.D., Shelby County Schools, TN
 Fernando Robles, USC, CA
 Rebecca Rodriguez, Camino Nuevo Charter Academy, CA
 Lisa Rodvien, Anne Arundel County Public Schools, MD
 Christina Ross, Baltimore City, MD
 Rosa Rubalcava, Los Angeles Unified School District, CA
 Elizabeth Rubio, LAUSD, CA
 Kristi Ruiz, LAUSD, CA
 Jill Russell, MSDWT, IN
 Emily Salander, Lawrence Public Schools, MA
 Maria Salazar, LAUSD, CA
 Emily Salinas, Indianapolis Public Schools, IN
 Sheila Salley, Los Angeles Unified School District, CA
 Erica Samuels, District of Columbia Public Schools, DC
 Cruz Sanabria, Boston Public Schools, MA
 Filiberto Santiago-Lizardi, Boston Public Schools, MA
 Ernestina Saucedo, Chicago Public Schools, IL
 Elizabeth Saucedo, LAUSD, CA
 Brittany Scherer, KIPP Indianapolis, IN
 Nicholas Schmidt, Noble Street Network of Charter Schools, IL
 Thomas Schreck, Chicago Public Schools, IL
 Caitlin Schrup, Des Moines Public Schools, IA
 Lea Schulz, Chicago Public Schools, IL
 Will Schwartz, Revere Public Schools, MA
 Charity Scott, MSD Washington Township, IN
 Alicia Serafin, Everett, MA
 Sandra Serkess, Boston Public Schools, MA
 Brooke Shaw, Chicago Public Schools, IL
 Natalie Shaw, Indianapolis Public Schools, IN
 Amanda Shimp, Owasso Public Schools, OK
 Mary Ann Shoot, Indianapolis Public School, IN
 Patricia Sierra, CPS, IL
 Amanda Silva, DC Preparatory Academy, DC
 Courtney Singleton, Indianapolis Public Schools, IN
 Joy Singleton-Stevens, Shelby County School System, TN
 Anita Sintes, Boston Public Schools, MA
 Lucas Smith, Groton Dumstable Regional School District, MA
 Shannon Smith, Rainier Prep, WA
 Lakeisha Smith, Shelby County Schools, TN
 Stephani Smith, District of Columbia Public Schools, DC
 Davida Smith-Keita, Achievement School District, TN
 Gordon Smoire, LAUSD, CA
 Helen Snodgrass, YES Prep Public Schools, TX
 Britta Sorensen, Gladstone School District, OR
 Stephanie Spangler, District of Columbia Public Schools, DC
 Korvette Spencer, Chicago Public Schools, IL
 Beth Sperry, Indianapolis Public Schools, IN
 James Staros, Chicago Public Schools, IL
 John Staver, Purdue University, IN

Dr. Dave Stein, Springfield, MA
 Sadie Stevens, MSD Washington Township, IN
 Virginia Stewart, Dennis-Yarmouth Regional School District, MA
 Bonnie Steyer, Cambridge, MA
 Anthanette Stotts, Boston Public Schools, MA
 Regina Street, Shelby County, TN
 Sarah Strunin, Chicago Public Schools, IL
 Lindsay Stuart, Alexandria City Public Schools, VA
 Amy Stubblefield, Brockton, MA
 Melissa Sturgeon, Chicago Public Schools, IL
 Cheryl Stutzman, D90, IL
 Monika Sulima, Chelsea Public Schools, MA
 Julie Summer-Singh, LAUSD, CA
 Tineal Summers, District of Columbia Public Schools, DC
 Phoebe Sunflower Wirth, Indianapolis Public Schools, IN
 Erin Swain, CO
 Megan Taddonio, Chelsea, MA
 Ashley Talbot, Chelsea, MA, MA
 Elise Taylor, Shelby County Schools, TN
 Elyse Terry, Chelsea, Massachusetts, MA
 Tyler Thiems, MSDWT, IN
 Annemarie Thilmont, Chicago Public Schools, IL
 Jacquel Thomas, Urban Prep Academies, IL
 Fannie Thomas, Shelby County School, TN
 Tiffany Thomas, Indianapolis Public Schools, IN
 Colton Thompson, Shelby County Schools, TN
 Ivy Thorne, LAUSD, CA
 Jeffrey Thorp, Buffalo united charter, NY
 Nicole Thorpe, Ingenuity Prep Public Charter School, DC
 James Thrifty, DPS, CO
 Christina Thurman, Tindley Accelerated Schools, IN
 Michelle Tindley, Prince George's County, MD
 Michael Titus, Salem Public Schools, MA
 Stephen Tow, Chicago Public Schools, IL
 Hallie Trauger, Chicago Public Schools, IL
 Noreen Treadway, Eagle County Schools, CO
 Sherrin Trombly, Lowell Public, MA
 Emily Trono, Boston Public Schools, MA
 Chris Tsang, Dorchester Collegiate Academy, MA
 Hwa Tsu, MSD Washington Township, Indianapolis, IN
 Shonte Tulloss, District of Columbia, DC
 A. Valdez, Portland Public Schools, OR
 Robert Valentine, Chicago Public Schools, IL
 Ruben Van Leeuwen, Boston Public Schools, MA
 Rosa Vazquez, IPS, IN
 Cara Vendeville, Shelby County Schools, TN
 Irma Venegas, LAUSD, CA
 Heather Victorson, LAUSD, CA
 Renee Vitale, Freetown Lakeville RSD, MA
 Ana Vites, Chicago Public Schools, IL
 Karen Vogelsang, Shelby County Schools, TN
 Carmen Wade, LAUSD, CA
 Nancy Waldron, Nauset, MA
 Daniel Walker, Metro Nashville Public Schools, TN
 Marcus Walker, Boston Public Schools, MA
 Celeste Walton, Shelby County, TN
 LaTia Watson, Shelby County Schools, TN
 Rennie Watson, Baltimore City Public School System, MD
 ShaDe' Watson, Tindley Accelerated Schools, IN
 Brie Wattier, Rainier Prep, WA
 Allison Weibel, Concept Schools, IN
 Nicole Wellman, Bright Star Schools, CA
 Yaimara Wheaton, ASD, TN
 Melissa Wheeler, Bayless School District, MO
 Tiffany Whitaker, Baltimore City Public Schools, MD
 Lindsay Whited, Chicago Public Schools, IL
 Connisha Wilkes, Shelby County Schools, TN
 Adrienne Williams, Center City Public Charter School, DC
 Derotha Williams, LAUSD, CA
 Shayna Wilson, Shelby County Schools, TN
 Vanessa Wilson, Dolton East SD 149, IL
 Mary Wilson, Prince George's County Public Schools, MD
 Miya Windom, Prince George's County Public Schools, MD
 Rosemary Winters, Shelby County School District, TN
 Karen Wong, LAUSD, CA
 Marion Woods, Shelby County Schools, TN
 Andrea Woolery, MSD of Wayne Township, IN
 Debra Wright, Shelby County Schools, TN
 Tlapapalyohua Yaocihuatl, Chicago Public Schools, IL
 Elizabeth Yates, Indianapolis Public Schools, IN
 Brenda Young, LAUSD ESC NW, CA
 Cindy Zirnheld, Muncie Community Schools, IN
 Maria Zuccarello, Los Angeles Unified School District, CA



FOR IMMEDIATE RELEASE
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NATIONAL URBAN LEAGUE PRESIDENT MARC MORIAL SAYS PROPOSED RULE FOR SCHOOL ACCOUNTABILITY IS A NECESSARY STEP TO UPHOLDING CIVIL RIGHTS PROTECTIONS IN EDUCATION

Washington, DC (May 27, 2016) – National Urban League President Marc H. Morial issued the following statement in response to the U.S. Department of Education proposed accountability guidelines for states to consider as they work to implement the Every Student Succeeds Act:

"Accountability without enforcement is meaningless. That is why the National Urban League joined nearly 50 civil rights and education advocacy organizations in urging the Department to use its full authority under the law to issue guidance that clarifies the responsibilities and obligations of states, districts, and schools to be in compliance with the intent of the Every Student Succeeds Act.

"We remain concerned about the shift of control over schools to states and local districts, which was authorized under ESSA, despite a preponderance of evidence that shows states have not been consistent stewards of civil rights. Those who argue that there is no need for strong federal oversight, ignore the long history of state and local decisions that have shortchanged the needs of vulnerable students like in *Brown v. Board of Education*.

"Last week, the National Urban League unveiled its 40th State of Black America report which highlights persistent racial and economic disparities from 1976 to today. While there have been improvements in educational attainment, our research shows that Blacks and Latinos have yet to experience the same rate of educational progress as whites. That must change.

"The Department's proposed school accountability guidance is a necessary step to enhancing equity and upholding the critically important civil rights protections we fought so hard to preserve. Some of which includes:

- Ensuring all communities have a voice by defining a clear role for parents, families, civil rights groups, and community leaders in the development and implementation of state and local plans, and the school improvement process;
- Clarifying that all indicators in a state accountability system must be disaggregated by individual student subgroups including each major racial and ethnic group and that 'super subgroups' cannot be used in place of individual subgroups, to prevent masking of student performance;
- Requiring a review of resource inequities when schools are identified for improvement; and
- Requiring states to provide timely, transparent analysis of student performance for parents and communities in an easy to read, accessible format and assign a summative rating to provide a clear picture of where a school stands.

"The National Urban League looks forward to carefully reviewing the proposed rule and offering detailed comments in the coming days and weeks."

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FOR IMMEDIATE RELEASE / [LINK](#)

August 31, 2016

Contact: Scott Simpson, [202.466.2061](tel:202.466.2061), Simpson@civilrights.org

Civil and Human Rights Coalition Responds to Department of Education's Proposal on Funding for High-Poverty Schools

WASHINGTON – Wade Henderson, president and CEO of The Leadership Conference on Civil and Human Rights, issued the following statement after the Department of Education released its draft regulation under the Every Student Succeeds Act (ESSA) governing how schools can distribute federal education funds provided to serve low-income students:

“Our system of funding education is unfair and unwise and this draft rule is an important step toward improving an intolerable status quo.

States and districts routinely spend less money to educate children facing greater challenges and the pervasive and historic nature of this problem does not lend itself to easy solutions. This is an old fight with a new urgency, now that students of color and low-income students both make up majorities of public school students.

This spring The Leadership Conference, along with 29 partner civil rights groups, urged the Department to issue strong regulations to ensure that states and districts weren't shortchanging low-income students. But the politics of education require compromise and the draft rule being proposed today is a step in the right direction. This rule doesn't solve this massive problem—no single rule could—but it brings us closer to a more just education system. The additional \$2 billion that the Department projects will flow toward improving schools for low-income students is desperately needed.

I look forward to working with my colleagues in the civil rights community to offer formal comments on this draft rule and to working with the Department of Education and the White House to ensure that the final rule makes even greater progress for students.”

Wade Henderson is the president and CEO of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the rights of all persons in the United States. The Leadership Conference works toward an America as good as its ideals. For more information on The Leadership Conference and its 200-plus member organizations, visit www.civilrights.org.

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FOR IMMEDIATE RELEASE
August 31, 2016

Contact: Anya Grottel-Brown ([917-902-5902](tel:917-902-5902))

BOSTON, MA, August 31, 2016 – *Celine Coggins, CEO of Teach Plus, issued the following statement after the U.S. Department of Education released its draft regulation on how schools can distribute federal education funds for low-income students under the Every Student Succeeds Act (ESSA):*

"As Title I teachers across the country know all too well, our current system of funding schools is anything but fair and equitable. A recent [Teach Plus Flash Poll](#) found that the majority of the over 1,000 Title I teachers we surveyed do not believe their schools are sufficiently funded to meet the educational needs of their students. If ESSA does nothing else to ensure student success, it is essential that pervasive funding inequities be addressed.

Earlier this year, over 600 Title I teachers sent a letter to Secretary King asking him to 'issue regulatory language that honors the purpose of Title I and the intent of the Every Student Succeeds Act.' We applaud the Secretary for listening to teachers and taking that action today. While the proposed regulation will not solve every problem facing every Title I school, it is clearly a positive step for their students. The proposal released today responds to input from teachers and many other stakeholders who have asked the Department to do more to address inexcusable funding disparities and ensure that low-income students and schools benefit from their fair share of funding. Teach Plus teachers – all of whom are high-performing and all of whom teach in high-poverty schools – look forward to submitting comments on the draft rule in order to ensure it does as much good as possible for the students they teach."

About Teach Plus

Teach Plus empowers excellent, experienced teachers to take leadership over key policy and practice issues that affect their students' success. Teach Plus programs are designed to place highly effective teachers at the center of improvements in schools as leaders of their peers and outside schools influencing policy decisions that affect their classrooms. The programs develop excellent teachers into leaders who achieve change and mobilize others in their school, district, state, and across the nation to bring change to scale. Since its inception in August 2007, Teach Plus has grown to a network of more than 22,000 solutions-oriented teachers across the country. www.teachplus.org

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**FOR IMMEDIATE RELEASE**

September 1, 2016

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Tri-Caucus on Department of Education's Proposed Title I Spending Rule

Washington, DC - Today, Congressional Tri-Caucus Chairs – composed of Congressional Asian Pacific American Caucus Chair Congresswoman Judy Chu (D-CA), Congressional Black Caucus Chair Congressman G.K. Butterfield (D-NC), and Congressional Hispanic Caucus Chair Congresswoman Linda Sánchez (D-CA) – issued the following statement after the U.S. Department of Education announced the proposed rule for Title I spending under the Every Student Succeeds Act:

"It takes more resources, not less, to educate disadvantaged students. For this reason, Congress has provided Title I dollars to supplement state and local investment— not fill gaps left by grossly inequitable school financing. The spirit and intent of Title I has been ignored for too long and has shortchanged far too many communities, impacting the students and families who are most in need. We believe the Department's draft 'supplement-not-supplant' regulation moves us closer to achieving equity in educational opportunity, but ultimately, the work falls on each of us as elected officials to ensure a continued commitment to some of the country's most vulnerable students so they have an opportunity to succeed. The leaders of the Tri-Caucus are committed to working with Secretary King and stakeholders to ensure the final rule continues to satisfy the longstanding intent of Title I by providing a standard of compliance that works for all students and teachers."

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The Congressional Hispanic Caucus (CHC), founded in December 1976, is organized as a Congressional Member organization, governed under the Rules of the U.S. House of Representatives. The CHC is dedicated to voicing and advancing, through the legislative process, issues affecting Hispanics in the United States, Puerto Rico and U.S. Territories.



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shernandez@maldef.org**NEWS RELEASE****FOR IMMEDIATE DISTRIBUTION**

September 1, 2016

**MALDEF SUPPORTS EDUCATION DEPARTMENT REGULATIONS TO ENSURE
SCHOOL FUNDING GETS TO STUDENTS IT IS SUPPOSED TO SUPPORT**

Proposed Regulation Aims To Ensure More Fair Funding of Public Schools Nationwide

(Washington, DC) - MALDEF supports the U.S. Department of Education's proposed regulation on school funding, released yesterday. The regulation would implement a school finance provision known as "supplement not supplant" in the Elementary and Secondary Education Act of 1965, reauthorized in December 2015 as the Every Student Succeeds Act (ESSA).

"One bedrock condition of states receiving federal funds for education is to ensure that those dollars are not laundered to support continued inequality in public schools," stated Thomas A. Saenz, MALDEF President and General Counsel. "The Department proposed regulation makes clear that it takes seriously its obligation to support greater equity in public school educational opportunity."

The provision in ESSA requires that federal funds from the nation's largest K-12 education law be used in addition to state and local funds, and may not be used to replace those funds in supporting the targeted students. The Department's proposed regulations require that states have a plan to comply by the 2019-2020 school year, and offers states three different ways to prove that they are complying with the law.

"Since it was first passed in 1965, the Elementary and Secondary Education Act has been a law whose purpose is to ensure all children, regardless of background or zip code, have equal access to educational resources" stated MALDEF Legislative Staff Attorney Adam Fernandez. "While no law or regulation is perfect, MALDEF welcomes the Department's effort to implement this important provision of the law."

MALDEF will submit comments to the Department, supporting the proposed regulation and recommending improvements, during the official public comment window.

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MALDEF: Founded in 1968, MALDEF is the nation's leading Latino legal civil rights organization. Often described as the "law firm of the Latino community," MALDEF promotes social change through advocacy, communications, community education, and litigation in the areas of education, employment, immigrant rights, and political access. For more information on MALDEF, please visit: www.maldef.org



FOR IMMEDIATE RELEASE
September 2, 2016

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NCLR: Department of Education Takes an Important Step to Remedy School Funding Inequalities

WASHINGTON, D.C.—Today, the Department of Education announced draft regulations aimed at ensuring that states are applying appropriate funding to low-income (Title I) schools as part of the Every Student Succeeds Act (ESSA). The draft rules ask states to prove they are providing additional funds to students; if implemented as drafted, the rules could mean an additional \$2 billion for low-income students nationwide. The funding affects the Hispanic community particularly; 50 percent of Latino students attend a mid-or high poverty school, according to a recent study by the National Equity Atlas.

“Our current education funding system is flawed and gives less to kids who need it the most. While these proposed regulations won’t eradicate long term and persistent funding inequities, they certainly represent a good step forward to ensuring our kids are getting their fair share of resources to help them succeed academically,” said NCLR President and CEO Janet Murguía.

The Education Department’s proposal clarifies for school districts a series of options for how to ensure federal dollars are supplementary to state and local dollars. Notably, ESSA now contains a directive on how districts must demonstrate compliance with this provision. The law states that districts must use a methodology to allocate state and local funds to each Title I school that ensures each such school receives all the state and local funds it would otherwise receive if it were not a Title I school.

“We are pleased the administration has taken on this critical issue to ensure our nation’s kids receive an equitable educational experience,” Murguía added.

NCLR—the largest national Hispanic civil rights and advocacy organization in the United States—works to improve opportunities for Hispanic Americans. For more information on NCLR, please visit www.nclr.org or follow along on [Facebook](#) and [Twitter](#).

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Julian Teixeira, Senior Director, Communications

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Visit NCLR’s [Website](#) | [Blog](#) | [Facebook](#) | [Twitter](#)

[Additional submissions by Mr. Rokita follows:]

“Nothing in this section shall be construed to authorize or permit the Secretary to prescribe the specific methodology a local educational agency uses to allocate State and local funds to each school receiving assistance under this part.”

— S. 1177, the *Every Student Succeeds Act*. Sec. 1118(b)(4).

“...embrace the option that would make SNS amendable to innovation while greatly reducing the burden of compliance. The idea is to replace the primary test currently in use with a simpler, more objective test, specifically: if districts can document that the manner in which they allocate state and local resources to schools is “Title I neutral,” they should be clear of suspicion around supplanting nonfederal funds with Title I dollars.”

– Joint report from CAP and AEI entitled, “Reauthorization of the Elementary and Secondary Education Act offers a New Chance to Improve Education: Joint Recommendations on Needed Changes to Title I.”

“ To demonstrate compliance with paragraph (1), a local educational agency shall demonstrate that the methodology used to allocate State and local funds to each school receiving assistance under this part ensures that such school receives all of the State and local funds it would otherwise receive if it were not receiving assistance under this part.”

– S. 1177, the *Every Student Succeeds Act*. Sec. 1118(b)(2).

“Specifically, the bill allows States and LEAs to comply with SNS for title I, part A funds if they can document that the manner in which they allocate State and local resources to schools is ‘Title I neutral,’ or that the methodology does not account for the Title I funds that schools will receive.”

-Senate committee report on S. 1177, the *Every Child Achieves Act*

[Questions submitted for the record follows:]

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November 1, 2016

Dr. Steve Canavero
 Superintendent of Public Instruction
 Nevada Department of Education
 700 E. 5th Street
 Carson City, NV 89701

Dear Dr. Canavero:

Thank you for testifying at the September 21, 2016, hearing on "Supplanting the Law and Local Education Authority Through Regulatory Fiat." I appreciate your participation.

Enclosed are additional questions submitted by members of the Subcommittee after the hearing. Please provide written responses no later than Tuesday, November 22, 2016, for inclusion in the final hearing record. Responses should be sent to Sheariah Yousefi on Committee staff, who can be contacted at (202) 225-6558.

Thank you, again, for your contribution to the work of the Subcommittee.

Sincerely,

TODD ROKITA
 Chairman
 Subcommittee on Early Childhood, Elementary, and Secondary Education

Enclosure

Rep. Hunter (R-CA)

1. In your testimony you discuss the weighted student funding model that Nevada is developing to allow funds to follow students to the school they choose to attend. Why is it unclear to you whether or not the proposed rule would permit Nevada to move forward with that proposal?

Rep. Thompson (R-PA)

1. In your testimony, you mention pieces of the regulation include ambiguous terms that could create confusion for auditors. We have heard our colleagues on the other side say the Department of Education's (the Department) proposal is appropriate because it creates an "auditable standard" that does not exist in the statute. But do you think the Department's proposal actually creates more confusion for auditors than what is in the statute?

Rep. Carter (R-GA)

1. Do you have examples of poor Title I spending decisions driven by the need to comply with the old supplement, not supplant requirement?
2. Do you think the new supplement, not supplant requirement, if implemented as intended by Congress, will allow for better, more effective decisions at the local level?
3. The impact of the proposed rules has been discussed in relation to the effects it will have on efforts to empower school leaders to make budgeting and staffing decisions based on the needs of their students. Why are state and district leaders moving in this direction? What is the potential benefit to schools and students of devolving authority from districts' central offices to building leaders?

Rep. Grothman (R-WI)

1. In your testimony you describe some of the efforts you are undertaking in Nevada to improve education in your state. We know that all states are in the midst of implementing the *Every Student Succeeds Act* and reimagining how schools are held accountable for student performance. Given all of these changes, is now a good time for the Department to also ask states and school districts to undertake the efforts you just described to comply with this rule, or would students be better served if leaders' time is focused elsewhere?

Rep. Curbelo (R-FL)

1. As discussed at the hearing, there are several potential staffing problems the proposed rule will create. The rule, though, includes language saying that nothing compels school districts to forcibly transfer teachers. Does this language in the proposed rule actually protect teachers against forced transfers? Why or why not? If it does not, what will the impact be on those teachers and their students?

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November 1, 2016

Dr. Nora E. Gordon
 Associate Professor of Public Policy
 McCourt School of Public Policy
 Old North Building
 Georgetown University
 37th & O. Street, NW
 Washington, D.C. 20057

Dear Dr. Gordon:

Thank you for testifying at the September 21, 2016, hearing on "Supplanting the Law and Local Education Authority Through Regulatory Fiat." I appreciate your participation.

Enclosed are additional questions submitted by members of the Subcommittee after the hearing. Please provide written responses no later than Tuesday, November 22, 2016, for inclusion in the final hearing record. Responses should be sent to Sheariah Yousefi on Committee staff, who can be contacted at (202) 225-6558.

Thank you, again, for your contribution to the work of the Committee.

Sincerely,

TODD ROKITA
 Chairman
 Subcommittee on Early Childhood, Elementary, and Secondary Education

Enclosure

Chairman Rokita (R-IN)

1. In your testimony, you talk about the cost-benefit analysis done and the lack of attention in the Department of Education's (the Department) proposal to the costs to students. Is there any way to quantify either the cost or benefit to students of the proposed rule?

Rep. Carter (R-GA)

1. In your testimony you discuss the challenges school districts faced in complying with the old supplement, not supplant requirement, and how that hampered innovation. From your research, can you provide some specific examples to highlight some of the poor decisions school districts were forced to make by the old requirement?
2. The impact of the proposed rules has been discussed in relation to the effects it will have on efforts to empower school leaders to make budgeting and staffing decisions based on the needs of their students. Why are state and district leaders moving in this direction? What is the potential benefit to schools and students of devolving authority from districts' central offices to building leaders?

Rep. Bishop (R-MI)

1. The Department has not bothered to provide an estimate for the cost of complying with the option that would require all Title I schools to receive at least the districtwide average in personnel and non-personnel expenditures. Is there an estimate for how many districts would not be in compliance with this option and the cost to those districts to come into compliance?

Rep. Curbelo (R-FL)

1. As discussed at the hearing, there are several potential staffing problems the proposed rule will create. The rule, though, includes language saying that nothing compels school districts to forcibly transfer teachers. Does this language in the proposed rule actually protect teachers against forced transfers? Why or why not? If it does not, what will the impact be on those teachers and their students?
2. In your testimony, you specifically talk about the likelihood that the proposed rule will result in more expensive but possibly less effective teachers being placed in Title I schools. Can you provide more information about why you think this will be the result and how that will impact students in those Title I schools?
3. Also in your testimony, you talk about the possible loss of state and local funds in low-income schools that are not Title I. I think that is an important point. In this debate, it seems like people assume that Title I equals low-income and non-Title I equals affluent. But as you point out, in most districts, districts will have to comply by moving around state and local funds, and possibly Title I funds, between low-income Title I schools and equally or nearly equally low-income schools that are not Title I. Is that right? Is there any way to guess how that will impact students in those schools?

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November 1, 2016

Mr. Ryan Owens
 Executive Director
 Cooperative Council for Oklahoma School Administration
 2901 N. Lincoln Boulevard
 Oklahoma City, OK 73105

Dear Mr. Owens:

Thank you for testifying at the September 21, 2016, hearing on "Supplanting the Law and Local Education Authority Through Regulatory Fiat." I appreciate your participation.

Enclosed are additional questions submitted by members of the Subcommittee after the hearing. Please provide written responses no later than Tuesday, November 22, 2016, for inclusion in the final hearing record. Responses should be sent to Sheariah Yousefi on Committee staff, who can be contacted at (202) 225-6558.

Thank you, again, for your contribution to the work of the Subcommittee.

Sincerely,

TODD ROKITA

Chairman

Subcommittee on Early Childhood, Elementary, and Secondary Education

Enclosure

Rep. Thompson (R-PA)

1. In your testimony you mention that pieces of the regulation include ambiguous terms that could create confusion for auditors. We have heard our colleagues on the other side say the Department of Education's (the Department) proposal is appropriate because it creates an "auditable standard" that does not exist in the statute. But do you think the Department's proposal actually creates more confusion for auditors than what is in the statute?

Rep. Carter (R-GA)

1. Do you have examples of poor Title I spending decisions driven by the need to comply with the old supplement, not supplant requirement?
2. Do you think the new supplement, not supplant requirement, if implemented as intended by Congress, will allow for better, more effective decisions at the local level?
3. The impact of the proposed rule has been discussed in relation to the effects it will have on efforts to empower school leaders to make budgeting and staffing decisions based on the needs of their students. Why are state and district leaders moving in this direction? What is the potential benefit to schools and students of devolving authority from districts' central offices to building leaders?

Rep. Russell (R-OK)

1. In your testimony you discuss the instability that could result from districts having to move staff and other resources at the last minute to ensure compliance. Could you provide more information about why the proposed rule will require this kind of instability?
2. You also mention in your testimony a student in an Oklahoma school who has a profound disability that required services that cost in excess of \$250,000 per year. There is limited flexibility to address special education services in the proposed rule. Do you believe that flexibility would address your concern?

Rep. Curbelo (R-FL)

1. As discussed at the hearing, there are several potential staffing problems the proposed rule will create. The rule, though, includes language saying that nothing compels school districts to forcibly transfer teachers. Does this language in the proposed rule actually protect teachers against forced transfers? Why or why not? If it does not, what will the impact be on those teachers and their students?

[Dr. Canavero responds to questions for the record follows:]

Rep. Hunter (R-CA)

1. In your testimony you discuss the weighted student funding model that Nevada is developing to allow funds to follow students to the school they choose to attend. Why is it unclear to you whether or not the proposed rule would permit Nevada to move forward with that proposal?

Nevada's transition to a weighted student funding formula includes additional investments in English learners, pupils with a disability, pupils in poverty, and pupils that qualify for gifted and talented education. With the exception of pupils with disabilities, the additional student "weight" does not extend to the entire qualifying student population, it is a staged transition. Indeed, approximately 70% of English language learners receive the state weight initiated in 2013 and significantly fewer students in poverty receive the state weight which was initiated in 2015. It was not economically feasible for the state to make material investments in student weights across all qualifying pupils; the staged transition is scheduled to conclude with uniform application of weights in 2021. As to how the weight follows pupils to each school remains in development.

Although the use of a weighted funding formula is a path toward compliance in the proposed regulations it is not clear how our staged implementation would comply given the staged implementation. For example:

- The proposal requires each LEA to distribute to schools "almost all of the state and local funds available to the LEA" through a consistent "resource formula". Is our staged transition to weights considered a consistent "resource formula?"

Rep. Thompson (R-PA)

1. In your testimony, you mention pieces of the regulation included ambiguous terms that could create confusion for auditors. We have heard our colleagues on the other side say the Department of Education's (the Department) proposal is appropriate because it creates an "auditable standard" that does not exist in the statute. But do you think the Department's proposal actually creates more confusion for auditors than what is in the statute?

Yes, I do. The Department's proposal includes a number of undefined terms and unclear concepts that will likely lead to confused implementation, audit exceptions, and inconsistent practice across States and local educational agencies (LEAs). For example:

- The proposal would require that LEAs distribute almost all their State and local funds to individual schools. But it is not clear what "almost all" means. Is 98 percent OK but maybe not 97 percent? No one knows.
- The proposal would permit LEAs to exclude district-wide activities (such as administration, curriculum development, and data analyses) from a supplement, not supplant compliance test so long as each Title I school receives a share of those

activities that is at least the share it would receive if were not a Title I school. Since centralized, district-wide activities don't benefit individual schools, because they are central functions, it is entirely unclear how this would work.

- The proposal would permit States to use a "funds-based compliance test," but it does not define that term and it is not clear what it means.

These are just a few examples.

Rep. Carter (R-GA)

1. Do you have examples of poor Title I spending decisions driven by the need to comply with the old supplement, not supplant requirement?

Under the previous supplement, not supplant requirements, states, districts and schools had to justify each individual cost charged to Title I funds as extra services, staff, programs or materials the state or district would not normally provide. Schools frequently pulled children out of the regular classroom in order to receive Title I services, so that they could show that Title I was truly supplementary and providing "extra" services. But pull-out practices can disrupt a child's education, and children often missed out on instruction that the rest of the rest of the class was receiving. The remedial instruction that a pulled-out child received did not allow the child to catch up and advance his/her academics; it actually resulted, if inadvertently, in the child falling further behind.

As another example, LEAs frequently used Title I funds to purchase books and other instructional materials, even if, for example, the materials were not aligned to the regular classroom curriculum, because LEAs could clearly demonstrate to auditors that they had used the money for supplementary purposes.

2. Do you think the new supplement, not supplant requirement, if implemented as intended by Congress, will allow for better, more effective decisions at the local level?

Nevada is committed to using available funding in a manner that supports the students with the greatest needs, including English learners, students in poverty and those attending underperforming schools. We believe the supplement, not supplant structure put forward by Congress in the *Every Student Succeeds Act (ESSA)* would continue to provide states and local districts the flexibility to implement supplement, not supplant in an effective way that will ensure schools and students receive resources commensurate with their need, while not undermining current efforts at the state and local level to create more equitable funding and outcomes. We further believe that the provisions in ESSA would be strengthened by requiring districts to publish the methodology they use for distributing funds under the new structure, allowing insight into how resources are distributed to both Title I and non-Title I schools; this is a core component of a proposal advanced by the Council of Chief State School Officers

(CCSSO), as an alternative to the proposal put forward by the Department of Education through proposed regulations.

3. The impact of the proposed rules has been discussed in relation to the effects it will have on efforts to empower school leaders to make budgeting and staffing decisions based on the needs of their students. Why are state and district leaders moving in this direction? What is the potential benefit to schools and students of devolving authority from districts' central offices to building leaders?

Teachers and school leaders are in the best position to make informed decisions about the needs of their students. These educators have a clear understanding about the unique needs of the students they serve, what interventions are effective in helping these students improve, and which are not. States and districts have recognized this by putting more power in the hands of officials at the local level to make strategic decisions about budgeting and staffing. The proposed regulations would make staffing and budgeting decisions more about compliance and total dollars than about best serving the needs of students, and would take the authority to make these decisions out of the hands of local educators.

Rep. Grothman (R-WI)

1. In your testimony you describe some of the efforts you are undertaking in Nevada to improve education in your state. We know that all states are in the midst of implementing the *Every Student Succeeds Act* and reimagining how schools are held accountable for student performance. Given all of these changes, is now a good time for the Department of also ask states and school districts to undertake the efforts you just described to comply with this rule, or would students be better served if leaders' time is focused elsewhere?

We believe that, by imposing a Federal mandate that has the potential to disrupt and undermine established, local budgeting and hiring practices, the Department of Education's proposed rules will create a significant administrative burden for states and local districts. State and local leaders are currently engaged in developing plans to implement ESSA and are working hard to identify opportunities to leverage the new flexibility in the law to better serve their students, teachers, and families. Efforts to comply with the structure outlined in the Department of Education's proposed rules would take the focus off of advancing effective educational strategies, and would instead place the emphasis on meeting the requirements of a Federal mandate.

Rep. Curbelo (R-FL)

1. As discussed at the hearing, there are several potential staffing problems the proposed rule will create. The rule, though, includes language saying that nothing compels school districts to forcibly transfer teachers. Does this language in the proposed rule actually protect teachers against forced transfers? Why or Why not? If it does not, what will the impact be on those teachers and their students?

The proposed rule would not protect teachers against forced transfers. If LEAs are forced to equalize spending across schools, under any of the compliance tests included in the regulation, they will either have to come up with new money (in order to increase funding for some schools without cutting it from others) or redistribute resources across schools. In a perfect world, I guess all the affected LEAs would just add more money, but that assumes that states and local taxpayers will instantly provide new resources in response to this new Federal mandate. More realistically, LEAs will have to make do with what they have and transfer funds across schools. Because the vast majority of funds spent in school districts are spent on personnel, this will mean transferring teachers and other staff, whether or not the teachers want to move or the receiving schools want to have them. It will thus reduce site-based management and result in much more district-level decision-making regarding who works in which school. The statutory language on transfers will not prevent that outcome.

[Ms. Gordon responses to questions for the record follows:]

Chairman Rokita (R-IN)

1. The costs and benefits of the proposed rule will depend on how each district would choose to implement it. Throughout my comments, I will assume they are implementing the rule in the absence of new funds, which I believe is by far the most likely scenario.

Without new funds, districts will need to pull funds out of some schools to send into other. If the funds pulled out were previously allocated on productive activities, the costs to students will be higher. Similarly the benefits will depend on how funds newly entering the previously low-spending Title I schools are allocated. It seems very likely that decisions about these funds will be limited by contractual arrangements with teachers.

Rep. Carter (R-GA)

1. Under the old SNS requirement, many districts chose “push-in” or “pull-out” activities, or “supplemental” (and potentially unaligned, rather than “core”) curricula to demonstrate the “supplemental” nature of their expenditures.

Rep. Bishop (R-MI)

1. I concur with the Department’s assessment that the cost would likely be similar to that estimated from the special rule. The option in question is essentially the same as the special rule, when you consider the requirement that “nearly all funds” be distributed via this method. Though the proposed rule appears to offer multiple options for compliance, in reality they are very closely related.

Rep. Curbelo (R-FL)

1. The language in the proposed rule does not prohibit forced transfers; it simply states that such transfers are not required. The disconnect here comes from whether or not you expect new state and local money. To comply with the rule without forced transfers is not impossible: it just requires an influx of new and state and local money. Any district with a significant compliance problem will need to generate new state and/or local money to level up (this corresponds to the \$2.2 billion transfer estimate), transfer resources—so many resources in some cases that this would need to involve teachers—across schools (this corresponds to the \$800 million estimate), or some combination of the two in order to comply.
2. I have written about my concern that teachers who would be both less effective and more expensive would be delegated to Title I schools here.¹ The easiest way to comply

¹ Gordon, Nora. June 1, 2016. “Why the Education Department’s New Equity Rule Might Not Be So Equal.” In *TheAtlantic.com* Accessed 11/22/16 at:

would be to pull experienced (and therefore more expensive) teachers out of non-Title I schools and to put them into Title I schools. But simply moving teachers around is no guarantee of better teacher quality in Title I schools or better outcomes for students: principals will likely fight to retain their most effective teachers, and be more willing to give up their least effective ones. Title I schools could therefore wind up with those teachers other schools have actively chosen to dismiss.

3. In high-poverty districts, many schools with very disadvantaged populations—even those with 75% or 80% of students eligible for free or reduced-price lunch—are still not Title I schools. If these high-poverty schools spend more on average than Title I schools, for example if they retain teachers at a higher rate so face higher salaries per teacher, then districts will be forced to take funds—if significant funds, surely in the form of staff positions—from these schools for the Title I schools. Again, the impact on students depends on how spending is adjusted after the cuts. But the broader point is that the Title I/non-Title I distinction, while a bright line from a policy perspective, does not map cleanly to poor vs. affluent schools.

<http://www.theatlantic.com/education/archive/2016/06/why-the-education-departments-new-equity-rule-might-not-be-so-equal/485012/>